Exhibit L

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x	11 CV 5201 (DLC)
	11 CV 6188 (DLC)
FEDERAL HOUSING FINANCE AGENCY,	11 CV 6189 (DLC)
	11 CV 6190 (DLC)
Plaintiff,	11 CV 6192 (DLC)
	11 CV 6193 (DLC)
v.	11 CV 6195 (DLC)
	11 CV 6196 (DLC)
UBS AMERICAS, INC., et al.,	11 CV 6198 (DLC)
	11 CV 6200 (DLC)
Defendants;	11 CV 6201 (DLC)
	11 CV 6202 (DLC)
	11 CV 6739 (DLC)
	11 CV 6203 (DLC)
And other FHFA cases.	11 CV 6739 (DLC)
	11 CV 7010 (DLC)
	11 CV 7048 (DLC)
----------x	

New York, N.Y.
December 9, 2013
2:35 p.m.

Before:

HON. DENISE COTE,

District Judge

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(Case called)

THE DEPUTY CLERK: Counsel for the plaintiffs, please state your names for the record.

MR. SELENDY: Good afternoon, your Honor, Philippe Selendy for FHFA. With me at counsel table from Quinn Emanuel are Richard Schirtzer, Christine Chung, Sascha Rand and Manisha Sheth.

MR. HART: Stephen Hart, deputy general counsel for FHFA.

MS. LEUNG: Kanchana Leung from Kasowitz Benson on behalf of FHFA.

THE DEPUTY CLERK: For defendant Goldman Sachs.

MR. KLAPPER: Good afternoon, your Honor, Richard Klapper of Sullivan & Cromwell for Goldman Sachs. With me are Bradley Harsch and Theodore Edelman.

THE DEPUTY CLERK: For Barclays Bank.

MR. WHITE: Good afternoon, your Honor, Thomas White from Sullivan & Cromwell.

THE DEPUTY CLERK: For First Horizon National Corporation and Nomura.

MS. DAVIDOFF: Good afternoon, Amanda Davidoff from Sullivan & Cromwell.

THE DEPUTY CLERK: For Credit Suisse.

MS. MOSKOWITZ: Good afternoon, your Honor, Laura Moskowitz from Cravath Swain & Moore.

THE COURT: And you are with someone, Ms. Moskowitz?

MS. MOSKOWITZ: Yes, your Honor. He's not on the appearance sheet. One of our associates, Omid Nasad.

THE DEPUTY CLERK: For RBS Securities and Deutsche Bank.

MR. WOLL: Good afternoon, your Honor, David Woll and Andy Frankel.

THE DEPUTY CLERK: For HSBC.

MR. CONLON: Good afternoon, your Honor, John Conlon and Michael Ware from Mayer Brown.

THE DEPUTY CLERK: For Bank of America and Merrill Lynch.

THE COURT: We missed Ally Financial.

No appearance for Ally Financial and no appearance for Ally Securities

MR. WARE: We are gone.

THE COURT: You are here, but you are gone. Congratulations, and thank you for appearing.

THE DEPUTY CLERK: For defendants Bank of America and Merrill Lynch.

MR. BENNETT: Good afternoon, your Honor, Ted Bennett, Beth Stewart, Mahmood Ahmad, and Eric Blankenstein from Williams & Connolly for Bank of America and Merrill Lynch.

THE DEPUTY CLERK: For Morgan Stanley.

MR. WEINSTEIN: Good afternoon, your Honor, Brian

Weinstein and Nicholas George from Davis Polk.

THE DEPUTY CLERK: For SG Americas.

THE COURT: No appearance.

THE DEPUTY CLERK: For the individual defendants, George Carp and others.

MR. GAITHER: H. Rowan Gaither with Richards Kibbe & Orbe, LLP.

With me this afternoon is my colleague Katherine Harrington.

THE COURT: Is there any other individual defendant who has an appearance to place on the record?

Is there any other defendant who has an appearance to place on the record?

Thank you, all.

I have received, as I was walking on the bench, a set of charts and I appreciate that, Mr. Klapper. Thank you.

We are having a conference because of a series of letters that I received. They were three letters dated November 15. One letter was sort of addressed to the timeliness of the request generally and one letter had to do with requests for further discovery from the GSEs and FHFA concerning bulk purchases, and another letter had to do with purchases by the GSEs through the flow process.

And in response I received letters, two letters of December 6 from the FHFA. Now, there are other letters that

preceded these. And, in particular, with respect to bulk purchases, I reviewed Quinn Emanuel's letter of November 22. And with respect to flow purchases, I reviewed letters of October 4 and November 6 from Quinn Emanuel.

The issue of discovery from the plaintiff has resulted in many conferences and an opinion of June 28 of this year and other rulings of the Court. So I think that's all we need in sort of setting the stage for today's conference.

I thought it might be helpful to break it down into those separate discovery requests of discovery requests associated with a program of purchasing whole loans as part of the continuous stream or flow and the separately negotiated purchases, the bulk purchase program.

Let's start with flow purchases. And I suggest we start with them because I understand that that program was the larger program within the GSEs. I understand that they made approximately 80 percent of their whole loan purchases as part of the flow program or lender channel as it's also referred to. I don't believe they made any subprime purchases, but they made some Alt A loan purchases. And I know someone is going to tell me at some point and remind me what percentage of the supporting loan groups in our securitizations are Alt A versus subprime, but my recollection was that the Alt A was very much a minority position in the supporting loan groups for the securitizations that are at issue in this litigation.

But the earlier letters from October and November from FHFA described in detail what FHFA was able to determine about the extent to which the originators' guidelines might have played a role in the acceptance into the flow channel of purchase of an Alt A mortgage, and it differed a little bit, depending on whether you're talking about Fannie Mae or Freddie Mac. Alt A loans or mortgages, as I understand it, were a minuscule portion of the Fannie Mae purchases, fewer than, I think, 2 percent a year.

With respect to Freddie Mac, Alt A purchases through the flow program constituted a somewhat larger proportion, somewhere, depending on the year, between 3 and 10 percent, looking at the years 2005 to 2007, which are important years for us.

And we will or won't need to get into more exhaustive analysis of the information conveyed to me in the October 4 and November 6 letters, but I think that sort of sets the stage a little bit for the consideration of the requests made by the defendants in connection with mortgages, whole loan mortgages purchased through the flow program.

This is fundamentally your request, Mr. Klapper, so I thought it might be helpful to start with you. And I hope you think it's helpful, also, to split it between the two different programs.

MR. KLAPPER: I do, your Honor. May I use the podium,

please?

THE COURT: You may.

MR. KLAPPER: Where I would like to start is a definitional problem, and that is that the definition that Fannie and Freddie use of subprime is unusual, as I understand it, it's only loans purchased from subprime originators. And that's the subject of the SEC's lawsuit against the former executives of Fannie and Freddie where the SEC says that that was fraudulent.

The reason they say that is because Fannie and Freddie purchased a lot more subprime loans under a more normal definition than they disclosed under this definition. That's the first two charts of the demonstratives that I handed up.

These are taken from the dissenting report of Commission Peter Wallison from the Financial Crisis Inquiry Commission, and he in turn gets his numbers from work done by Edward Pinto, who is a former chief credit officer of Fannie Mae and is now at the American Enterprise Institute. And what Mr. Pinto did is to use the office of controller of currency definition of subprime, which is FICO or credit scores of 660 or below. That's the OCC definition.

And if you use that definition and a standard definition of Alt A loans, which are basically loans with various features that are different from the normal conforming Fannie and Freddie loans, what you find is that as of June 30,

2008, right before the financial crisis, Fannie and Freddie alone held 12 million Alt A and subprime loans with an unpaid principal amount of 1.8 trillion. That's a pretty big number by anybody's estimate.

All private parties, including securitization trusts, held 7.8 million in number of Alt A and subprime loans and 1.9 trillion in unpaid principal amount. So what this demonstrates is applying a definition that the OCC believes in and looking through the loans that Freddie and Fannie held, they held an enormous amount of Alt A and subprime loans.

If you look the at next chart --

THE COURT: Since I'm just looking at this for the first time and want to make sure I understand, can we pause here one second?

MR. KLAPPER: Certainly.

THE COURT: In that category which is labeled other, what does PMBS mean?

MR. KLAPPER: That's Mr. Wallison's term for what we call private label securities. They are private residential mortgage-backed securities. They are the ones that are issued here.

That other category would be loans held by large originators that they didn't securitize, people like Goldman Sachs and Merrill Lynch who bought whole loans and had them in inventory. It's any private party's holding of subprime and

Alt A loans.

THE COURT: But not the purchaser of a securitization?

MR. KLAPPER: Well, in a securitization it would be in the securitization trust. So this would include all the loans that were in the securitization trust that Freddie and Fannie and lots of other people purchased certificates in.

THE COURT: Let us say one of our certificates, if there is a certificate in this case where the supporting loan group had subprime or Alt A mortgages, or a combination of both, and it was purchased by one of the GSEs. Is it counted in other?

MR. KLAPPER: It would be in the subprime Alt A PMBS, so it is in that other category.

Now, Freddie and Fannie, to be sure, also held probably an even more enormous number of so-called conforming prime loans. But these numbers demonstrate that at least by June, end of June 2008, Fannie and Freddie held more subprime and Alt A loans by number by a lot than all private parties taken together and held slightly less than the -- the unpaid principal amount than all private parties taken together.

THE COURT: Thank you. I'm ready to turn to next page.

MR. KLAPPER: The next page is purchases.

I think we can pretty much disregard the earlier years part because they are not at issue but in part because he had

to do some estimation for those earlier years. But what you have here is subprime PMBS. That would be the private label securities that we are talking about here, purchases by year, subprime loan purchases. Again, the definition used is credit score below 660, Alt A private label securities and Alt A loans.

And what you can see from this is that Fannie and Freddie purchased in general couple of years that are exceptions, but in general they purchased more subprime loans by a lot than they purchased subprime, probably, securities. And, similarly, they purchased more Alt A loans than Alt A private label securities.

THE COURT: What years would you like me to focus on? It will just take me a minute, but I would like to focus where you would like to focus me on.

MR. KLAPPER: I think we should focus on 2005, 2006, and 2007.

THE COURT: Give me a second.

I've looked at these three columns in these rows.

Mr. Klapper, can you make your point again that you would like me to focus on.

MR. KLAPPER: Yes. The point is that Fannie and Freddie purchased enormous amounts of subprime and Alt A loans, as defined by the regulator, by the office of the controller of the currency. It's not the very small part of their business

that their own definition would say. And I would say that the most recent letters from FHFA have been careful to say that they have been using the definitions that Freddie and Fannie use. I understand that.

But if you use a more normal definition of subprime, they were a very, very large purchaser of subprime loans in most years, but not all, a greater amount of subprime loans than certificates in private label securitizations. So it's an important part of their business, and we have said repeatedly, and I know your Honor has agreed with us entirely at least, to date, but it's an important part of their business that does the same thing that defendants do.

Flow and bulk, that's a somewhat different issue because I think there is agreement now that what they did with bulk purchases is pretty much the same as what we, the defendants, did. They did diligence on them to the originators, guidelines. They had, as we had, an overlay of other things that they wanted diligence provided to flag for them. But it's pretty much the same process as when Goldman Sachs or others purchased loans that Alt did due diligence on and then securitized from. The flow is different --

THE COURT: Just before you move to flow, I am not sure that they agree with you, at least, we will hear in a moment. I think it depends upon the longevity of the process that you are saying they were doing the same things that the

defendants were doing in this case. I don't understand them to be saying that their securitization process was the same in the bulk purchases if that's what you are trying to tell me.

MR. KLAPPER: I am not sure I understand. Maybe I have not been clear. They purchased pools of loans. They did.

THE COURT: So I don't want to mislead you. If you are just talking about the underwriting process or the due diligence process, if that's all you're focusing on.

MR. KLAPPER: I'm focusing on that for now, although it is true that for Freddie, at least, in their T deals, that they did securitize at least some amount of those loans. But from the due diligence perspective, from the perspective of the work that Clayton was doing, you heard Mr. Rothenberg, Clayton's lawyer, in court saying that they did pretty much the same thing for Freddie and Fannie that they did for the other clients of theirs, which was a combination of looking at guidelines and also flagging certain things that the client wanted to look at.

From Goldman Sachs' perspective, we wanted them to flag all condominium loans. We wanted them to flag all manufactured housing loans. We wanted them to flag all loans with a debt income of 50 percent or more, even if the originator's guidelines were 55 or 60. We wanted them to flag all loans that had cash out over a certain minimal level. Should we get discovery of Clayton and a Freddie and Fannie, I

believe we will see somewhat of a similar process, so it's not apples and oranges; it's apples and apples.

The flow I would see is somewhat different. Understand, we are at a disadvantage here because we have not gotten discovery. So we know what we have been told, we know what we have heard from some witnesses. We know what we have been able to glean from documents. And Mr. Harsch and a whole lot of other people have spent a lot of time trying to find in this large production those things that relate to single family and it's been very, very difficult.

But we know something about their process. We know that they have quality control reviews, we know that they had reviews of loans that didn't perform, as part of a process of putting them back to the originators of the loans. We know that they had processes in place so that they didn't just originate them through the flow process. They did some of this checking and they found what could be called defects and sometimes they said that's fine, they are not defects or they are not material, and sometimes they said they were material. That is of great importance to us because that's what this case is about at this point in the process, underwriting and deciding what's material and what's not material in terms of a defect.

We also know that they had -- this goes back to those letters that your Honor referenced from FHFA in October and

November -- that they had either waivers or --

THE COURT: Variances.

MR. KLAPPER: Variances, yes -- that they permitted the originators to have. And, again, we don't have many of them because we just have a few of these contracts, but those waivers and variances permitted the originator to produce loans that certainly didn't meet the standard Freddie or Fannie guidelines. We also know that when they had loans that they purchased from originators, they not only wanted them to meet their Freddie and Fannie guidelines with waivers and variances, but they also wanted them to meet the originator's guidelines.

So they would review the originator's process and guidelines before they would go ahead and purchase loans from the originator. So we have many of the same originators, we have many of the same guidelines, we do have the Fannie Freddie guidelines, although Goldman Sachs had a similar set of guidelines itself. Generally speaking, it set out what loans that met the originator's guidelines, Goldman Sachs, would purchase.

So we have a process that, again, as far as we can see, without discovery, that is in many respects similar. It's different in the sense that there is not a prepurchase due diligence process. They did do some amount of sampling, generally, after the purchase. But they didn't do what we did or what they did in the bulk area, which is to do the due

diligence before you bought the pool of loans.

So what we have requested --

THE COURT: We are still now on the flow.

MR. KLAPPER: We are on the flow. What we have requested is information that relates to the work that they do. We have tried to be narrow. I know that FHFA doesn't agree with our assessment of whether we are narrow, but we have tried.

And the things that we have asked for, which are Exhibit A on our letter on flow, first off, the documents that they looked at to reach the conclusions that they reached in their letters, so this would be the agreements with the originators and the various amendments and the like that reflect variances and waivers, so that we are able to see the same thing that they see and either confirm or not their conclusions.

We have identified some people who were involved with the flow and pre and postpurchase reviews of these loans. And we are certainly willing and think it would be a good idea to talk about how to make that review as targeted as possible. These are the people who are doing reviews of these loans, both pre and post purchase. There is a group site called Alt A transformation, e-mail alias, which was the Fannie Mae e-mail that Alt A variations were sent. I have no idea how much material went into that.

Certainly, again, we would be willing to discuss burden, if there is a burden there. Documents sufficient to show the variances or waivers. If there is some place where you can get documents that lay out these variances and waivers, we would like to see those, and documents sufficient to identify exceptions or defects that they identified in their loans, and then documents sufficient to show the performance.

So we are not requesting a wholesale production on their part. I think we have gotten to this point rather late in the game, in part because it's been difficult for us to understand how exactly they did the flow business from the outside. We are more knowledgeable about it now, thanks to their letters, some testimony, some documents. But even now we are seeking discovery in part to test the hypothesis that what they did in the flow area was different. And I do think that one of the ways we got to where we are is, there has been a fair amount of argument on both sides that I would classify as going to the weight rather than discoverability. There has a lot of been of, these loans are different than your loans. That's a discussion. That's an argument you make at trial, assuming that we get discovery and assuming that we believe that there is some weight to evidence coming from the bulk or the flow documents. And then we put them in. And then they can argue that this is apples and oranges. It's not, I believe, a proper reason to deny discovery. Burden might be.

But to deny discovery on the grounds that they assert that this is apples and oranges is really taking a question of weight and using it to decide discovery, and we don't think that that's appropriate.

We have also pointed out, and this is the remainder of my demonstrative, we have also tried to point out a little bit of how we got here. We don't have it in the demonstrative, but your Honor recalls that we had a hearing in front of your Honor back in July of 2012. Among the topics was discoverability of the single family side. Your Honor held that you would not order that. I think it was subsequent. But perhaps it was at that conference. You said that you would consider more targeted requests. So as we moved into the fall we did make some targeted requests. We don't have it here, but Ms. Shane, who somehow is here today in the back was the first --

THE COURT: Welcome, Ms. Shane.

MR. KLAPPER: She had a letter, I believe, it was December 7, which looked for some due diligence material. I had a letter December 12, 2012, which is, there is a pullout from that letter on the third slide of the demonstrative. And we talk about, in particular, a Fannie Mae bulk purchase of subprime loans, and we sought various information on pull-through rates and waivers and things like that.

They responded that on December 14 that the requested documents relate to loans other than those in the

securitizations collateral pools. That much I think we can agree on. The loans in the collateral pools are unsettled loans, at least ones that they are purchasing are not literally the same loans. Having different characteristics, we would not agree with that, made to different borrowers. Well, I don't know that we can actually say that. One would expect that they are different borrowers, unless borrowers bought several properties. And unwritten to different guidelines. That, also, certainly on the bulk side has turned out not to be true.

THE COURT: All of this is complex and nuanced.

MR. KLAPPER: It is indeed, your Honor. But, for example, and take just --

THE COURT: To stick with the flow, I'm just trying to understand the argument and the context. And let's deal with all the flow issues with care and then we will go to the bulk issues and deal with those in care. I am just trying to understand in a very general sense. I think I understand your first point, which is that those figures that I started with, that there are no subprime loans in that flow program, which is about 80 percent of the whole loan purchases. And there were Alt A loans purchased and trying to put some numbers on those, that that may not be reliable. Because if you use the OCC definition with this 660 or below score as the cutoff, that the numbers may be very different and there might be subprime and more Alt A within the flow category.

Do I understand that first point?

MR. KLAPPER: Yes, you do, your Honor.

THE COURT: We have then this continuous stream of purchases with a larger component of subprime in Alt A as the defendant's fear might be present there, using the OCC definition. And, yet, as I understand it, the flow is a continuous program because the GSEs have put out there the guidelines or guides that will govern that program. And if your loan meets that set of guides, again, this is subject to distinctions we will get to, but the starting point is, then they might qualify for admission into the program, right?

MR. KLAPPER: Yes. Although then we get to the world of variances and waivers.

THE COURT: That's right.

MR. KLAPPER: And the disagreement that we have with FHFA as to whether those variances and waivers, as we see it in documents that we have been able to identify, effectively permitted the originator to originate in accordance with its guidelines or whether, as FHFA would have it, that the variances and waivers had to do with other things. And we are, again, at a disadvantage because while we have a few of these agreements and amendments with the waivers and variances, we don't have what they have and have looked through. But we do have documents, and they are in Mr. Harsch's declaration, that make the statement that for people like Countrywide and others,

they were in the Alt A world, underwriting to their guidelines and that there were waivers --

THE COURT: I'm sorry. When you use they, they were underwriting to their guidelines?

MR. KLAPPER: Correct.

THE COURT: I just want to make sure I'm understanding who the they is.

MR. KLAPPER: Countrywide.

THE COURT: Countrywide was underwriting to its guidelines.

MR. KLAPPER: Its Alt A clients guideline. There were these credit boxes called various things, so that we in some evidence of these, example or two. And what they would do is circumscribe that universe in some way that Freddie or Fannie were comfortable with, as would Goldman Sachs on occasion certainly with its conduit program.

(Continued on next page)

MR. KLAPPER: So what you have is underwritten to the guides, but sometimes the guides with the waivers and the like don't completely match up, so that they won't end up being exactly the same.

Now, what we've done is we've looked at the loans underlying our pools and see whether or not they can fit within that credit box, if you will, the requirements from the types of loans that Fannie and Freddie would buy. And for the all-day-longs, if I've got my numbers right -- Mr. Harsch will correct me -- it's something like 70 percent. So what we're talking about are loans that are underwritten in the initial instance to the originator's guidelines, limitations put on by Fannie and Freddie, but ones that the loans underlying our securitizations would fit within those parameters.

So we're not talking again of apples and oranges. We're talking about loans that could have been sold to Fannie and Freddy, and sometimes they bid on the same pool, some of which they bought whole loan and some of which they had put into a private labeled securitization which they then purchased it. So you are talking about the same kinds of loans.

Now, they make this point that the guidelines are different, which is a little bit odd to me that they would make this, given the enormous amount of effort that they and we have all had to try to find the applicable guidelines for the originators for the loans that went into the securitizations at

issue in this case. It's not like there's a single guideline anywhere that, you know, is the be all or end all. They have their guidelines, we have our guidelines, Countrywide has its guidelines. Everybody's got different guidelines, and they seem to change every other week.

The important point is that they were underwritten to those guidelines in the flow business sometimes pre, mostly post. They reviewed both by sampling to try to have quality control and targeted, when loans didn't perform -- and they checked and said, well, you know, were those representations about the characteristics of those loans, were they correct? Were there compensating factors? Was this defect material? And partly did that so he could do put-back claims, but in part just quality control. And that's important, because that gave them knowledge of whether or not these originators in the same types of loans, sometimes in the same pools, where they bought some of the pool and they had another part of the pool go to a securitization, whether those originators were actually underwriting to their guidelines, whether there were defects, whether those defects were material and whether they were a lot of them or a little of them.

And so this information would give us insight into how they treated defects or not; how they determined compensating factors. There's an example in Mr. Harsch's declaration of an instance where Clayton identified the loan as being --

THE COURT: Clayton, that wouldn't be in flow; that would be in bulk.

MR. KLAPPER: But they did the same sort of thing in flow for the loans that didn't perform well. And on a sample basis --

THE COURT: You know, I know that you've been deeply immersed in this for a long time, but for me, it's going to be simpler if we can stay on one side and then move to the other.

MR. KLAPPER: I understand, your Honor.

THE COURT: Okay.

MR. KLAPPER: So the on the flow side, they did reviews; some prepurchase, largely postpurchase. Some of those reviews were just samples, literally samples, that they would do to see whether or not the loans they were buying in this flow program, whether they were what they were representing to me. Some of them were targeted, especially with respect to the loans that hadn't performed. But they did do these reviews. And one of the things they were looking at in these reviews, especially the ones targeted towards the loans that didn't perform, was to determine whether or not there had been a material misrepresentation, you know, a material flaw in the loan; whether it's that the stated income was not believable, whether other things were not reliable. So they did do this work on the flow side. It's not just on the bulk side.

THE COURT: And give me that last point again. I

think I have your first point, is to get an understanding of the GSE's knowledge of the originators' underwriting, to the extent it met the originators' guidelines.

MR. KLAPPER: Right.

THE COURT: Your second point was, as I understood it --

MR. KLAPPER: Materiality.

THE COURT: -- how did the GSEs treat defects that they uncovered through their reviews?

MR. KLAPPER: Correct. That --

THE COURT: And your third point --

MR. KLAPPER: Well, I would say the second point goes to materiality.

And then the third point is, of course, diligence, reasonableness of our diligence; what they did in terms of loans they were buying which went into securitizations but also went on the books. And they pointed out that they retained the risk in the securitizations.

So given all this risk that they were undertaking, what did they think was adequate care? What did they think -- what did they do in practice to try to ensure that they were buying loans that were what they thought they were? And you know, the knowledge point, I know we've had a lot of discussion over the last couple years about knowledge. The one part of the knowledge point that I do hope is not debatable is if

Freddie or Fannie had knowledge that an originator's -- an originator was not following its guidelines and was buying whole loans and was buying securities and securitizations with the same kinds of loans from the same originators, that that would at a minimum start the clock running for inquiry notice.

I know your Honor has said that -- and said about this point that if the loans are different, the fact that an originator is not working to its guidelines and loans, that you're buying whole loans might not necessarily trigger notice about what are the loans in the securitizations that you're buying.

But we have had testimony since that point that makes the point that Fannie and Freddie thought the loans they were buying were better quality loans than the ones that went into the securitizations from the same originators. So, you know, take the example of that credit matrix, that they thought that the loans that they weren't buying in whole loan form were not as good credit quality as the loans that they were buying in whole loan form. So, you know, at trial or in a motion, you know, it may be that FHFA will argue, and it may be that they'll convince your Honor, that there isn't a close enough tie between what they were seeing on their whole loan flow side and what was going on, what went into the private label securities.

But, again, that's a question of at this point weight,

not discoverability. At this point we've been relegated to kind of picking the crumbs off the floor, rather than getting the real meat of the information about this diligence, about these waivers and variances, the sorts of things where we think we've made a pretty good showing. But it's been a hard process, and we think there's a lot more information there that we're entitled to.

And at the end of the day, they're still going to have the argument that it's different. At the end of the day, I could easily see Mr. Selendy getting up there and arguing to the jury, or maybe at admissibility stage arguing to your Honor, you know, these are too difficult, and here are my facts. And they should be excluded, or the jury shouldn't believe that we should have been on notice or shouldn't believe that there is -- that this is evidence of materiality. But that's an argument he can and should make down the road, not an argument to prevent us from getting discovery.

THE COURT: So I appreciate that, Mr. Klapper, but, I mean, I do want to just to put this in context. Not only is document discovery over by a long time; deposition discovery of the parties is over. So there's still some third-party deposition discovery going on.

This was to be my first trial, UBS trial. Right now my first trial in this litigation is the Merrill Lynch trial in June.

And by the way, I forgot to let everyone know, I have two colleagues who have made themselves available for the fall trials. There are six cases slated for trial in the fall, three with three backups. So there are three of us committed also for the trial program in the fall.

So another preliminary point. There was a lot of discovery taken of the GSEs. I'm not just going to regurgitate my opinion from June 28th. And so I don't think characterizing it as crumbs is necessarily an accurate term. But what we're talking about is whether at this stage, and meeting the standards set forth in the June 28th opinion, late targeted discovery of additional documents is or isn't appropriate.

So coming back to the flow side, just before I let FHFA be heard, just so I can make sure I understand your point, in the November 6th letter they describe a review of all the master agreements, amendments and associated variances and waivers, depending on whether you're talking about Fannie or Freddie, for all the loans originated, as I understand it, by an originator who was responsible for at least 2 percent of the alt A loans supporting our supporting loan groups. So anybody who did any -- I don't want to say substantial. The cut-off is far below that. And for Fannie there were 60 master agreements, 1,350 amendments, 730 variances. And of those 730 variances, 30 mentioned lender guidelines. And the figures for Freddie, as I understood it, were 16 master agreements, 90

amendments, 370 variances, and 10 of those 370 mentioned lender guidelines.

So just stepping back again in the flow program -- and I think you're in agreement with this in the way you're describing it -- is that the purchases through the flow program were principally pursuant to the standard set forth in the GSE guides. Then there were variances and waivers of those. And then a minuscule portion of those variances and waivers made some sort of reference to the lenders, the originators' guidelines. And then you have a description of the more detailed study of that subset. And your argument that further discovery is essential is because the GSE's purchases through their flow programs would have given them particular insight into the extent to which these loans conformed or did not with the originators' guidelines.

MR. KLAPPER: That's right.

THE COURT: Good. I just want to make sure I understood that.

MR. KLAPPER: Let me remark on that point that your Honor referenced. Just because a waiver or variance doesn't mention the originators' guideline doesn't mean that the waiver or variance was intended -- was not intended to make the originators' guidelines fit within the Freddie/Fannie standards. Again, we don't have all these documents, but I could easily see that somebody's alt A program has certain ways

in which it doesn't quite match up with the Freddie/Fannie program. They come in and say, would you waive, would you vary your guidelines so that we can just sell you our alt A loans according to this program or that program, without having to worry about the mismatch at a certain point.

Now, that wouldn't require -- at least theoretically, and about all I can do at this point is theorize -- that wouldn't require that it said these loans will be underwritten to X originators' guidelines. It could simply say, our guidelines are varied in the following ways. We have stated income loans. We reduce the loan to value slightly or the debt to income slightly so that it would match up. And what we do know is that there are documents in the documents that we have got that talk about waivers and variances in order to permit loans underwritten to X originators' guidelines to be purchased by Freddie and Fannie.

So the fact that they've reviewed these waivers and variances and haven't seen explicit references to the originators' guidelines I don't think ends the inquiry. And that's one reason why we believe we're entitled to discovery of what they looked at and to see whether or not what they're saying is right. I mean, it may be literally right, but it may not be substantively what we're looking for. What we're looking for is to see were there are variances and waivers that made it possible for a Countrywide or Wells Fargo or whomever

to sell their alt A loans to Fannie and Freddie in the flow program by just applying their own guidelines for a particular program.

So I just want to be clear that I don't think that what they've said gets the job entirely done. All it does is say there weren't explicit references that say Countrywide's guidelines control, but it could very well be that effectively that worked because of the adjustments in the waivers or variances.

THE COURT: So your concern is, though a particular variance or waiver did not identify any particular aspect of the originators' guidelines, it may nonetheless have been consistent with, or indeed, adopted an originator's guideline in a particular aspect?

MR. KLAPPER: Yes. And what I do know is from Goldman Sachs, in its so-called conduit program, which is more or less like a flow program except that Goldman Sachs' diligence stole those indeed in the conduit program -- but if an originator -- and so Goldman Sachs had its own guidelines that you were supposed to meet. If an originator's guidelines were immaterially different than the Goldman guidelines, they would tweak the guidelines and let them originate to their own guidelines. And I could easily imagine the same thing happening for Freddie or Fannie, because, understand -- and Mr. Harsch's declaration points this out -- you can't divorce

our assessment of this from the record evidence that demonstrates that Fannie and Freddie were extremely anxious to be able to participate more in the alt A and subprime markets. They were very anxious to do that.

And so one could easily see -- I mean, the whole alt A and subprime purchases by Freddie and Fannie were different from its conforming prime loan purchases. And they themselves were worried that they were following the market down in terms of credit standards. And so you could easily see, if some big originator comes in and says, you know, I'm willing to do this, I'm willing to sell you loans in the flow program but I've got a problem because you're just a little off where my guidelines are, if you can modify them, then I can just, you know, do what I do selling loans to anyone else, I'll sell them to you.

That's one of the problems we see which, again, we don't know it to be the case, but I can easily see it being the case. And it's more consistent with the documents that we do see, which talks about changing, modifying the guidelines to conform to the originator's guidelines. And I could easily see that happening without saying originator's guidelines control, which is apparently what they were looking for.

THE COURT: Thank you. And I'll turn to FHFA, but I just want to make two other observations so that I can completely respond to some other aspects of Mr. Klapper's presentation.

You know, it would be far easier for a court to say just yes to any discovery request and overrule any objections to discovery. And I know no party would want me to proceed that way; that there are standards for discovery, and it's not just the wild, wild west under the Federal Rules of Civil Procedure, and every party bearing the burden of litigating in America must have open file discovery without any limitation.

So the standard certainly is not at one extreme whether it's admissible in court and could be brought to the jury's attention appropriately in a summation. That would be far too restrictive, and I don't think anyone is suggesting that an admissibility standard has been the standard I've applied here. At the other extreme would be no limitations whatsoever, and you just serve your document demands and get anything you list there.

So there is some middle ground, which I've tried to explain over and over again what my standards are and what I'm trying to do here. And my starting point, but only my starting point, is understanding the burdens that the parties will face at trial and what they need in order to prepare their claims or defenses for trial. That's just so I understand in a general way what relevance is.

And then we go beyond that to put you in a position to prepare for trial and analyze the strengths and weaknesses of your case. And with respect to single-family side production

of documents regarding originators, I described that document production. It's already been ordered in this case in the June 28th opinion, and I won't repeat that now.

MR. KLAPPER: I understand, your Honor.

I do with some trepidation make the point that there is another case involving FHFA in Los Angeles. It's in the Countrywide multidistrict, where Judge Pfaelzer has ordered FHFA to produce documents relating to the single-family side. I'm not in that case so I have no idea what the contours are of that production, but one of the things we're all very attuned to is burden. And to the extent that they're already doing it, one would think that the incremental burden would not be significant, although I also would have said that I think about the Clayton reports, which I believe are so clearly relevant here, and Clayton was willing to hand them over without any assertion of burden.

And finally, unless you want me to move to the bulk side, you know, it is unfortunate that we're standing here now. Depositions of parties have concluded. Document production of the stragglers has concluded with respect to the parties. Nonparties are going forward. But this is a big, big, big case. People have paid billions of dollars to resolve this case. And I think it would be a mistake. It would not be in accord with Rule 1, which your Honor likes to cite to us, which is important to us.

And so we have to manage with where we are. I'm not suggesting we can turn back the clock to July of 2012, but on the other hand, we've gotten to where we've gotten as, we pointed out, perhaps by some missteps along the way by us. We've pointed out some things that FHFA said that we believe have turned out not to be accurate or completely accurate, some of which your Honor relied on. And we have some of these in our demonstratives.

THE COURT: Well, you know, if there's anything that you think has misled me and that I've relied on, we should deal with that with laser-like intensity. I don't want to just let that reference pass and not address it.

MR. KLAPPER: Yes. Now, we've been very careful, or at least I have tried to be very careful, to speak of misstatements rather than anything intentional, because I don't have a basis to conclude that anybody on either side here intentionally did anything to mislead the Court. But, you know, you take, for example, we have a slide on this at page 8, representation made to the Court, kind of diligence that was being done by Clayton was basically comparing the loan table to the loan file. This is at the Valentine's day hearing.

THE COURT: Sounds like the Valentine's day something other...

MR. KLAPPER: Your Honor, and all of us would have been rather doing something else. But you know that --

THE COURT: Excuse me one second.
(Pause)
MR. KLAPPER: We pointed out that at least with respect to the Clayton work that we're familiar with, that that's not true. And Mr. Rothenberg said the same thing. I don't know where that came from, but it gave the impression that Clayton was not doing the same thing for Freddie and Fannie as it was for us.
THE COURT: Now, I'm trying to read the page number.
MR. KLAPPER: They're a little light.
THE COURT: Yes.
MR. KLAPPER: This is page eight.
THE COURT: No, no, no, no. On the transcript of the February 14th hearing.
MR. KLAPPER: 82, I'm told.
THE COURT: Thank you. That's Mr. Kasner speaking?
MR. HARSCH: 62.
MR. KLAPPER: 62 I'm told. I'm sorry.
THE COURT: Ms. Chung, you're front and center, page 62.
MS. CHUNG: I have it, your Honor.
THE COURT: Good. So let me just put it in context. Give me a moment. (Pause)
Okay. I've read the passage at page 62, and I'm happy to hear you, Mr. Klapper.

MR. KLAPPER: It's now clear -- we thought it was clear at the time based upon what we saw. This is more on the bulk -- this is on the bulk side of things -- that Clayton and others, when they did due diligence for Freddie and Fannie, did more or less the same thing that they did for us, which is they didn't simply compare what was in the loan file to the loan table. They also went and checked on things, like the reasonableness of stated income, if it was a stated income loan; of the representation of debt to income; employment, is the person still employed. They also checked it against the originators' underwriting guidelines. And we've gotten -- Mr. Harsch's declaration contains this, confirmation of that in testimony from people at Freddie and Fannie. And Mr. Rothenberg also confirmed it.

So, you know, that statement, which may have been the basis for the Court thinking that the third-party vendors -- well, it's on page ten, where your Honor observed in your June 28 opinion that diligence of the type performed by third-party vendors involved simply comparing loan tape with information contained in the loan file. Well, that's not right. And it's part of the misimpression I think that what Fannie and Freddie were doing was materially different. The same slide at page ten talks about --

THE COURT: Okay. We're involved, I think, with the task of trying to understand if any of my discovery rulings or

any other ruling -- I'm happy to have it be any ruling -- was based on a misunderstanding because of a misdescription of something. And so page 62 of the February 14th transcript you contend is a misdescription.

MR. KLAPPER: Correct.

THE COURT: -- of the process that Clayton performed.

And now I'd like you to point me to what you think I did in reliance on that that you would argue was an error and should be changed.

MR. KLAPPER: Well, the most direct statement that relies on that statement in court is on our page ten of the demonstrative. This is from your June 28, 2013, opinion. And this is the middle quotation, where it says diligence of the type performed by third-party vendors involved simply comparing the loan tape with information contained in the loan file.

THE COURT: Excuse me just one second. I have a WestLaw version with me, and I'll try to find that passage and then look at the context.

MR. KLAPPER: I mean, the context is we had a couple other quotes here, is that this goes to the apples and oranges points that we spent so much time talking about in prior sessions. And that is was what Fannie and Freddie were doing, was that different in some material way from what the defendants were doing? And one of the distinctions is this idea that the third-party vendor diligence was different.

THE COURT: Well, I just want to pause for a moment, because looking at page 62 seems to be a discussion about something completely different. It's talking about the reunderwriting process that involved -- that counsel know better than I involved an enormous effort. And I think everyone would agree that the reunderwriting process that you're -- you have undertaken in the context of this litigation is different than the due diligence process that anybody performed, GSEs or defendants, at the time of the securitizations.

MR. KLAPPER: No, we would not agree that it was different. The work that Clayton and other due diligence vendors did on the loans that they were told to do due diligence on by Freddie and Fannie or by the defendants was to look at those loans and compare them to loan underwriting standards.

It is also the case, it is true what FHFA has said that in addition to comparing the loans to the standards, the underwriting standards, there were particular types of loans with certain characteristics that apparently Freddie and Fannie, and definitely Goldman Sachs and other defendants, told the Claytons of the world to call -- label a three. This is what I talked about before. There are certain types of loans -- it's not that they're bad loans, but we wanted to look at those loans, even though they were consistent with the

standards. And that's a bit of an extra, an add-on, if you will, to the basic job of, were these underwritten in conformity with the underwriting standards, including the notion of whether or not there were sufficient compensated factors if the loan didn't literally meet every one of the guidelines.

The underwriting, reunderwriting process is the same type of thing. FHFA claims, well, the Claytons of the world didn't go beyond the loan file. Well, that's just not consistent with the evidence. They did go and try to check on occupancy on occasion. They did try to check on employment. They did check on the reasonableness of stated income. And that's exactly why, in order to demonstrate that point for Freddie and Fannie, as well as our own diligence, why the Clayton materials are so relevant, and the advantage that the Clayton materials have, and for that matter, the Freddie and Fannie overrides in consideration of whether it overrides --

THE COURT: I do think -- yes, maybe it's impossible to stick with one topic, but we definitely are now into bulk purchases. And I do want to hear from you in detail, but I'm afraid I'm not going to be able to analyze things with care if we just keep switching around.

MR. KLAPPER: Whatever your Honor wants to do, I just was following up on this point about Clayton.

THE COURT: Okay. So I have it that the misstatement

is a February 14th transcript at 62. We'll try to flag the passage that you believe erroneously relied on it. We may have it.

So, I know all of you have copies of the June 28th opinion at your fingertips, but the passage that Mr. Klapper is referring to I believe is in the -- not the analysis section but the historical section, laying out the evolution of the arguments before me. And this is talking about the February 14th conference. And it's picking up on what FHFA stated at that conference.

So we'll come back to this, and hopefully before the end of the day, when I can put in context how it may or may not have affected some ruling I made in discovery. I can't link it up right now, but maybe counsel can help me later.

MR. KLAPPER: Understood.

THE COURT: Thank you very much.

A couple observations: That this is a big case. I'm very conscious of that and have tried to devote the resources of the court, in accordance with the size of the case and the importance to all the parties, the plaintiff and certainly the defendants. And the fact that Clayton could easily turn over reports and no doubt would like to in this litigation isn't the beginning and end of a burden analysis.

As counsel well know, with every document produced, there is an enormous quantity of lawyer and paralegal time

devoted to the analysis and consideration of the documents. So burden is a complex issue in and of itself. Sometimes a third-party's production burden can be enormous; sometimes not. In almost every instance, the burden on the parties who receive the documents can be quite significant. So I have to consider it from that point of view also.

In terms of the discovery ordered in the California action, I don't have access to that -- I mean, I do, I'm sure, as a theoretical matter. I don't know precisely what you're referring to there, but I think you said that the California court allowed discovery of the single-family side of the business, but I have, too. There have been a host of categories of production from the single-family side of the business, a host of targeted searches that I ordered FHFA to do or they agreed to do one or the other. So I think I'm ready to hear on the flow side of the house from FHFA.

MR. KLAPPER: Thank you, your Honor.

THE COURT: Yes.

MR. SCHIRTZER: Good afternoon, your Honor.

I'm going to try to respond to much of what Mr. Klapper has said but not necessarily in the sequence in which he said it, because I don't want us to lose the big picture for some of the minutiae.

I do want to ask your Honor, because I'm tempted to start with the purported misrepresentation about Clayton,

whether you'd like to hold that off for bulk, because it really has nothing to do with flow, or whether you'd like me to address that now.

THE COURT: I think it would help me to address it in context of bulk, because that's where I understand the Clayton due diligence analogy and actions may arise.

MR. KLAPPER: Has entirely to do with bulk and nothing to do with flow, so I'm happy to do that, your Honor.

There was, as you surmised, a lot of bleeding together of Mr. Klapper's presentation between flow and bulk. I'll try as best I can to separate out those two issues entirely and only address the ones that pertain to flow.

I will say start with one item, and that is the demonstrative that was first introduced today, and particularly the first two pages purporting to show the volume of subprime and all-day purchases by the GSEs over a various period of time and in comparison to other purchasers.

(Continued on next page)

THE COURT: Excuse me, Mr. Schirtzer. I shouldn't do this, but I need to interrupt. Mr. Klapper, it's important that we have a copy of this in the record and I'm holding up the series of charts. Could you just send me a one-line cover letter and attach them and then I can get them docketed?

MR. KLAPPER: Certainly, your Honor.

THE COURT: Thank you very much.

MR. SCHIRTZER: Your Honor, I saw this first at 11:30 this morning. I'm not really in a position to talk about the substance of the numerical calculations. I will say a couple of things.

Mr. Klapper said several times that these numbers are derived using an OCC definition. I hope it's clear to the Court that the OCC had nothing to do with these calculations. In fact, these calculations, as I understood it, were put together by the American Enterprise Institute. That's an industry group with a lot of bank support. So whether in fact the application of the OCC definition to Freddie and Fannie's holdings was correctly calculated or not is something I can't opine on.

I will note that the OCC definition of subprime is not necessarily the same as the bank's own definitions of subprime. I'm not an expert in this side of the case, but I'm told that at least Credit Suisse and probably other banks use a different definition of subprime with lower FICA scores and higher LTVs

than the one that is used by OCC.

Having addressed that point, let me come back to what I think is the big picture. We heard almost an hour and a half presentation regarding mostly flow. And what it really amounts to at the end of the day is a full-on assault of the single-family discovery protocol that your Honor established back in July of 2012. Because I did not hear a single suggestion that any of the discovery now being sought on the flow side would fall inside the lines of the types of single-family discovery that we promise to produce and the types of single family discovery that your Honor said were important to produce.

As you well know, we offered to produce and have produced any single-family documents which were considered in connection with PLS purchase, was in the custody of custodians who were required to share that information with PLS traders or that went to the GAC risk committee with supervisory responsibility for PLS. If any of these documents that are being requested today fell into that category, they would have been produced, and most likely many of them have been because you've got a voluminous declaration from Mr. Harsch with many exhibits produced by FHFA, and in many cases produced as far as back as August of 2012.

As your Honor also notes, for the senior risk custodians, they got any single-family document if they

discussed the risks associated with an originator or an originator's underwriting guidelines or an originator's adherence to guidelines. And there are many, many senior risk custodians who we have designated and whose files we have produced on that basis.

The same is true or same argument could be made for the new custodians that are being requested in connection with this application, many of whom, by the way, your Honor, were never previously requested until this point in time and who had exclusive single-family responsibilities. And on the flow side it's probably instructive to focus on Mr. Klapper's Exhibit A, which is titled targeted request, although anything but.

Let's talk about number 2, which is documents concerning GAC flow purchases of Alt A levels from the files of individuals responsible for or involved with performing or overseeing pre and post purchase reviews of these loans and assessing whether those loans conformed to underwriting guidelines. And then they list five custodians, only one of whom was ever requested previously and that was Tracy Mooney. Tracy Mooney was requested, I believe, around early July of 2012 and Tracy Mooney was not even somebody they thought important enough to elevate up to the level of discussion at our July 31 conference.

Now, from a big picture standpoint, as the Court said the last time we were here, there is a benefit to not

revisiting the rules every time. And, yet, that's exactly what the flow application and, for that matter, the bulk application seek to do, revisit the rules for discovery that has either been requested previously and denied or, in several instances, both in the flow and bulk categories, discovery that is now being requested for the first time with very little justification for the -- I can't even call it an 11th hour request because it's so close to the 12th hour.

Of course, the requested discovery ignores the very substantial volume of single-family discovery that we have already produced. The requested discovery in many instances, as I said, has previously been presented, argued, and rejected. And in terms of the purported basis for reconsideration, they are two. One, defendants contend that now that they have seen our reunderwriting expert report, they know that we are focusing on underwriting defects that weren't apparent to them before. And so that has opened a door that allows them to come in at this hour and ask for the vast volume of flow discovery being sought in this Exhibit A. And that is simply not true. They have known for some time now, there has been a quite of lot discussion at court hearings about the general -- guidelines is not the right word -- the general aspects of our reunderwriting approach, what we were focusing on. We have had discussions with Daubert motions. We have had many discussions with respect to what would go into reunderwriting and the

notion that the service of the reunderwriting report now reopens the door for entirely new discovery requests. I don't really understand that argument, your Honor.

The second one which Mr. Klapper actually never got around to is that we have somehow intentionally or unintentionally, I think he said unintentionally, misled the Court with respect to the applicable guidelines for flow loans, and that our correction letters of October the 4th and November the 6th now warrant a reconsideration of the Court's prior rulings.

As your Honor seemed to understand from what I heard you say, we were very, very careful in looking at the analysis that went into the October 4 and November 6 letters. And really it's a question that I posed in the first instance internally and to the client. If there are a some small number of guidelines or small number of variances in waivers that make reference to originator guidelines, can we say that, nevertheless, even within that small subset the loans were originated pursuant to GSA guidelines as opposed to lender guidelines.

And so we went through a painstaking analysis to try to understand both the scope of the issue and then to look at the actual answer to the question. And the scope of the issue involved three things. In the first instance it involved looking to see how many variances there were for Alt A, and

there were none for subprime because the GSEs didn't buy anything through the flow channel that they considered to be subprime. Of course, there is no variance or waiver in connection with subprime, so we did that calculation. Then we looked to see how many of those, that subset, were credit-related variances, and most of them had nothing to do with credit. And then we looked at those to see how many of those credit-related variances actually incorporated some portion of lender guidelines, and the small number that your Honor has already indicated during today's discussion.

And then we looked further at those specific guidelines to see what was really going on in the context of those guidelines. Were they simply adopting lender guidelines whole hog, if you will, or were they putting limitations and requirements on those guidelines. And that is what we have reported to your Honor in the October 4 and November 6 letters, very painstakingly and without cherry picking, your Honor, I promise you. If there was something that we thought might be of interest to the Court, we made sure to bring it to the Court's attention and we come up with a list of a handful of variances and waivers, frankly, mostly Countrywide variances and waivers in which there is an incorporation by reference of lender guidelines. And it isn't clear from the eligibility grid that, in fact, we are closer to a GSE standard loan than a lender standard loan.

And so I stand here confident that that exercise certainly does not warrant this Exhibit A, which now requests not just the work product that we put into the process of making that determination, which is their category 1, but categories of things which were never previously requested, and that could be category 2, 3, 4, 5, and 6. These are categories that have never come up in previous hearings. You would have to strain to look back at their document requests and find these categories, but I certainly recall no correspondence between the defendants and FHFA that gets to the level of specificity requesting the documents that are now being requested here.

THE COURT: I agree in terms of my own recollection that this is essentially, these are new names and new material. But because we are always trying together to get to the merits and the whole understanding of the issue, you heard Mr. Klapper say, okay, very few variances or waivers mention the originator's guidelines. But maybe the process of the creation of a variance or waiver was taken into account in the originator's guideline in trying to get acceptance of the whole loan through the flow program to the GSEs by creating a variance or waiver that would bring the GSE's criteria more in line with the originator's guidelines.

MR. SCHIRTZER: That's not what we saw in our review of the originator's guidelines. These eligibility grids that

the defendants don't seem to adequately credit fairly consistently impose what we think are fairly described as Fannie or Freddie limitations on the loans and the variances and waivers. Frankly, the more likely process is that lenders were adjusting their standards to get closer to GSE standards so that their loans would be GSE sale eligible.

THE COURT: When it sold to a GSE, would you explain the guarantee system to me.

MR. SCHIRTZER: Your Honor, I wish I could, but I'm not the right person to do that. Maybe somebody else here can answer that question.

THE COURT: So a loan is purchased through the loan program into the GSE system. I am trying to understand from a defendant's point of view the argument for how this -- of course, I'm not beginning to deal with burden or the timing or any of that. But just to understand, from a substantive point of view, the connection between that process of applying the GSE's criteria which the prospectus supplements said was a higher criteria than those that were applied generally to the originators, that produced the loans in the supporting loan groups. What's the connection?

MR. SCHIRTZER: It's a great question, your Honor. And I don't really understand the connection because by definition we are talking about loans that never made it to the PLS traders, never made it -- or information about loans that

never made it to PLS traders, their supervisors, the senior risk custodians. Because if it did, it would have been produced and indeed has been produced. So you're talking about -- and this is so clear from your June 28 decision. When you start talking about the legal standards that apply to the claims and defenses, you're talking about a completely different set of loans, a vast set of loans, no doubt, on which the defendants want to open the door into discovery to see what was going on in that pool of loans, even though it's completely different loans than the loans in the supporting loan groups.

To paraphrase your Honor, it's never going to establish knowledge because it is by definition a different set of loans. It's never going to establish inquiry notice, because, again, it's a different set of loans.

And, of course, in the flow context, as your Honor notes on several occasions in your June 28 decision, we are talking about decisions being made on individual loans, not pools of loans. And we are talking about decisions being made in the context where you have repurchase rights to put the loans back after they come in the door as opposed to being a PLS investor. There is a very significant difference --

THE COURT: I'm sorry to interrupt, but did the Fannie Mae and Freddie Mac flow program always involve a repurchase contractual arrangement?

MR. SCHIRTZER: I believe so, your Honor. I can't say

that with absolute certainty, but to the best of my knowledge, yes.

THE COURT: I think Mr. Klapper's first point was that understanding the flow program would have given the GSEs knowledge of whether the originators were actually underwriting it in conformity with their own guidelines. That was his first point.

MR. SCHIRTZER: Right. Your Honor has dealt with that very squarely in the June 28 decision. Unless you want me to elaborate on that, I think it's quite clear, to use the analogy that's been used before, we cannot be talking apples and apples when we are talking about a different set of loans.

THE COURT: And different guidelines.

MR. SCHIRTZER: And different guidelines.

THE COURT: Different standards.

MR. SCHIRTZER: Correct.

THE COURT: Used for a different purpose.

MR. SCHIRTZER: Yes. In almost every instance except the subset of the subset of the subset that I was trying to describe for you where I think there could be a very reasonable debate about the guideline.

THE COURT: The second point that Mr. Klapper pointed out was, could we learn something useful about how the GSEs treated defects when they located them in this body of loans purchased through the flow program to which the GSEs applied

some programs of due diligence or review.

MR. SCHIRTZER: Mr. Klapper buried the lead there, unfortunately. The lead is that the GSEs did not do prepurchase due diligence on their flow channel purchases. They did some postpurchase due diligence, consistent with a party who had the contractual right to put back loans, and that's where the diligence was done. And I assume if they found defects, they either decided whether to waive those defects or to put back the loan, but they were not in a similar posture as the defendants here, doing prepurchase diligence before deciding to purchase the securitized loans.

THE COURT: First of all, that review process, was it made to see whether or not the loan conformed with the eligibility grid or the standards set forth, generally speaking, in the GSE guides, or was it applying some other standard? Do you know?

MR. SCHIRTZER: As I understand it, your Honor, it is the former. The process was to determine whether it complied with the GSE guidelines as modified in some cases by a variance or a waiver. That's what our folks were looking at.

Now we come back to the subset of the subset of the subset. If hypothetically there was some postreview in which part of a variance was partial inclusion of part of their guidelines, would that be looked at as well? I imagine so, but I don't know. But as a general matter, the answer is clear,

they are looking at GSE guidelines. And if there is a variance or waiver they would look at that, too, to make sure they complied with the variance waiver because that becomes part of the contract between the GSE and the seller in connection with the flow purchase.

THE COURT: So if the GSE found a defect in that review process and decided to shrug its shoulders and not care about that discrepancy, the issue is, what does that tell us, if anything, about, I take it, materiality of a defect found when a bank performs a presecuritization due diligence review comparing the loan and the supporting loan group to an originator's guidelines across a universe of loans that will support that certificate and about which the underwriting will make a generalized statement in a prospectus supplement describing conformity across the pool.

MR. SCHIRTZER: That's exactly right, your Honor. There are multiple levels of difference, including the fact that you're talking about different loans. Materials, as you've said, is an objective standard. At the end of the day you have a representation in the prospectuses that the defendants have looked at the pool of loans and winnowed out the bad loans.

THE COURT: The third thing that Mr. Klapper mentioned, at least as I have in my notes, of potential interest may sort of overlap with the second and that is the

extent of which the GSEs felt compelled to do any diligence at all to ensure that loans -- the loans were as they were represented to be. But, I guess, again, because you had that contractual right to put the loan back to the originator, again, that's a very different kind of due diligence function or review function in the first place.

MR. SCHIRTZER: I don't see how informative that is if a postpurchase due diligence subject to a purchase right compared to the prepurchase due diligence that the defendants were doing in connection with the securitizations.

THE COURT: Is there anything else you wanted to say on flow?

MR. SCHIRTZER: Let me look quickly at my notes, please.

One point I would make, and this goes to the timeliness of the request, is that with respect to at least some of these defendants, they have known as much about the variances that are now the springboard for this discovery as we have and for as long -- Mr. Harsch's declaration at paragraph 40 mentions Countrywide, Bank of America, and JP Morgan as all parties who had variances. Variances is a contract or a modification to a contract. There are two sides to it. And at least some of those defendants have had those variances all along and never thought it was justification for the broad-scale flow discovery that they seek here today.

Your Honor, the last point I would like to make is burden because we are constantly being told that their requests are targeted. But we actually went back to our clients to try to determine what would be involved in pulling this stuff out.

And for Freddie Mac, Freddie Mac doesn't even use Alt A as an identifier in its electronic system. So we would have to search for what would appropriately be characterized as Alt A purchases. And then we would have to manually review the ones that have been designated as Alt A, pull documents out of storage. It would be a spectacular undertaking.

And similarly, for Fannie Mae, particularly for categories 4, 5, and 3, again, it's a manual reconstruction. And I shouldn't have left out category 1 because despite defendant's belief that there is some tracking system that allows us to pull up all of the master agreements and the variances, in fact, just the opposite is true. It took us weeks and weeks of people manually going to files to try to assemble just the subset of master agreements and variances. It's a pretty substantial subset that we reviewed in connection with our November 6 letter. I basically turned the place upside down to get that material.

To actually go back and look for all of them, which is what defendants are requesting, would take months and months and essentially require the cooperation of vast swaths of single-family employees to go back and try to recreate who had

variances, who had waivers, who had master agreements and where they might be.

THE COURT: Thank you.

Mr. Klapper, let's turn to bulk.

MR. KLAPPER: Before I get there, just a few points.

On the definition of subprime, Mr. Lockhart, former head of FHFA, testified subprime is less than 660. This is something FHFA, through its former director, understood, requests having never been made before. We made very broad requests initially and tried to negotiate with FHFA. On single family we were precluded with the exceptions that have been discussed.

What we have been trying to do here, and this is why we talk about these reports, is to be very specific. And, no, we have not focused on some of these reports because, frankly, we hadn't been at the point to understand what they really were. And in terms of focused requests we thought that focusing on specific reports made sense.

The Harsch affidavit, paragraph 134, gives a bunch of reports that Fannie Mae prepared on a regular basis, monthly, apparently, which include lender exception reports and exception summary reports, which are exceptions from the originator's guidelines, not from the Fannie guidelines.

And, lastly, this idea that these are completely separate loans. Yes, they are not the loans underlying the

securitizations, but, as I mentioned before, we presented evidence that they are buying from the same originators, the same types of loans to the same credit standards. These are similar loans.

THE COURT: Mr. Klapper, I don't want to keep interrupting, but every phrase you use, every reference to something in an affidavit or a statement that these are the same standards, I mean, I want to take everything you say seriously, and there is a lot here. It's very dense, everything you say. And you're entitled to have my full attention. And I don't want to keep interrupting, but you have said several things here which don't sound completely right to me or I don't understand. And I would want to make sure that I was responding with the care that you deserve.

If there is some reference to a report in an affidavit that you want me to focus on, if you want to go back on flow. I thought we were moving on to bulk, and reconsider any particular issue, if you want me to focus on that, I will. But I am really ready to move on to bulk unless there is something you care about significantly here.

MR. KLAPPER: There is quite a bit, but let me focus on paragraph 134 of Mr. Harsch's declaration.

THE COURT: I have it.

MR. KLAPPER: So this is Fannie Mae.

THE COURT: Are we back on flow or are we moving to

bulk?

MR. KLAPPER: This is, I believe, flow. This is Fannie Mae doing the sort of review for compliance of individual loans, compliance with underwriting standards. This is something that they did after purchase, as I understand it, as part of the monitoring of the Alt A products, including performance trends and exceptions to eligibility guidelines.

And then there is this table 6 that's part of paragraph 134, and these are monthly reports. So the first one, the lender exception report for the top 20 lenders, loan level deliveries that were outside lender's underwriting guidelines. The second one is exception summary report, again, outside of lender guidelines. Then they have other reports which are with respect to the Fannie Mae guidelines. But it's just not true that they completely disregarded the lender guidelines, although they definitely also looked at their own outer boundary and inner boundary guidelines. So I didn't want to let it pass that these were entirely Freddie and Fannie guidelines and that they had no review process to see whether or not these flow loans corresponded to the originator's guidelines.

THE COURT: So you have pointed me to paragraph 134 in order to underscore the importance of two kind of reports that you believe are created in connection with the GSEs reviews of loans purchased through the flow program in which the GSEs,

after the fact, are doing a review of the individual loans to determine whether or not those loans were actually in conformity with the originator's guidelines.

MR. KLAPPER: That's correct, your Honor.

THE COURT: And you're interested, in particular, in the lender exception report and the exception summary report. And is that what's captured in part by your paragraph 5 request?

MR. KLAPPER: That's correct, your Honor.

THE COURT: So I guess we will take this as one last item on the flow side before we turn to bulk.

MR. SCHIRTZER: Your Honor, I don't know where this particular chart came from. I don't know whether, in fact, these reports were prepared on a monthly basis and, if so, for what period of time. I do know, and if I can share this without waiving privilege, I just spoke the other day to someone who works at Fannie's national underwriting center and he said he had no idea what a lender exception report or an exception summary report was. And, consequently, it clearly is not something that is being maintained on a regular basis, as paragraph 134 would suggest.

THE COURT: Well, we are fortunate that there are two exhibits, I don't have them in front of me, Exhibits 16 and 17 to the affidavit. So at least that's what it would reflect in the affidavit's chart. So we will put this to the side and we

will see -- we will make a schedule at the end of the session. I would ask FHFA to look at Exhibits 16 and 17, see whether they are for the flow side of business and Fannie Mae or Freddie Mac, and respond to that request for those monthly reports.

MR. SCHIRTZER: We will be happy to do that, your Honor.

THE COURT: Mr. Klapper.

MR. KLAPPER: Your Honor, just point of clarification, the exhibits, Mr. Harsch's declaration is 108. The reference to exhibits in this table, which was taken from Exhibit 108, were exhibits to the document that is Exhibit 108, and we need to determine whether Exhibit 108 to the Harsch declaration has these exhibits attached to it.

THE COURT: Great. So, Mr. Klapper, you'll get Mr. Schirtzer the right documents that are the two examples.

MR. KLAPPER: Yes, your Honor.

THE COURT: Thank you so much.

Mr. Klapper, bulk.

MR. KLAPPER: Bulk. We don't seem to be in as much disagreement on the bulk side as on the flow side.

THE COURT: I actually don't think there is much disagreement on the flow side when we get down to the specifics. At least I'm not able to identify them or understand what they are, but let's move to the bulk side.

MR. KLAPPER: So on the bulk side it's clear that both Fannie and Freddie purchased loans in bulk for many of the same originator's loans whose loans are in the securitizations at issue in this case, that they used outside vendors such as Clayton, that Clayton applied standards similar to those that applied to the defendants when the defendants had Clayton do similar diligence for them.

To the extent that there are differences, that those differences would be ones that this Court and the defendants, possibly FHFA, wouldn't really know without obtaining the documents relating to these bulk purchases. Those could be the Clayton documents, those could be due diligence files for the particular pools. We have produced certainly a great number of due diligence files from the pools underlying the securitizations. We don't at this point know how Fannie and Freddie kept their diligence files.

We do know that there are certain files identified by witnesses. Feigles identified hard-capped binders that he kept that contained information relating to the due diligence of the pools at issue. If we are correct as to the number of pools, they are not that many, at least in the context of this case. Apparently, we are talking about something a little shy of 50. And all of this, as we demonstrate in Mr. Harsch's declaration, results in a record of identification of potential issues, consideration by Clayton, consideration of those issues, and

resolution of those issues, either to drop the loan, include the loan.

These bulk purchases are very much the same business conducted in the same manner as the defendants conducted their business. It goes directly to materiality, it goes to the reunderwriting process. And I didn't mention the reunderwriting reports, but the thing that has come out about the reunderwriting reports, more than anything, is a reliance on supposed industry standards, which has struck me at least as being a little odd, considering I don't know who the industry is other than Freddie, Fannie, and the defendants. It would seem to cover the waterfront.

And if all the defendants apparently didn't follow the industry standards and if it turns out that Freddie and Fannie didn't follow the industry standards, I don't know what industry this is pointing to, but it's apparently a fairly significant number of the supposed material defects. And we are entitled to discovery that would enable us to show that what the experts now claim with the benefit of hindsight was an industry standard, was not something that Fannie and Freddie followed and it's not something that anyone else in the industry followed.

There is also the issue --

THE COURT: Now, when we are talking about the industry standard, we are talking about it in the context of

the industry standard for conducting due diligence to support a securitization and representations made in a securitized offering. And in terms of this portion of our conference we are not now talking about bulk conferences. I don't know, but I think it's true that Freddie securitized some of its bulk purchases.

Is that your representation, Mr. Klapper?

MR. KLAPPER: Yes.

THE COURT: Are you contending that Fannie securitized some of its bulk purchases?

MR. KLAPPER: Yes. Sorry. Freddie, yes. Fannie, no.

THE COURT: So how many of Freddie's bulk purchases were securitized?

MR. KLAPPER: I don't know that we have the documents sufficient to go one to one from the purchase of the pool of loans to the securitization, but there were these so-called T deals and I gather there were 14 of them. There is a typo in Mr. Harsch's declaration. He said the declaration with a total original principal amount of 300 billion. It's really 30 billion. But these are still fairly large deals, so they average a little over 2 billion a deal. We have documents that say that certain of these loans, the bulk purchases went into thee deals, but I don't know that we have sufficient documents to line up with any kind of precision how much of the bulk purchases went into the T deals.

THE COURT: I'm remembering that way back when, but definitely 2012, I can't tell you if it was in the summer or in the fall, at one of our conferences I ruled that the GSEs should provide some discovery with respect to their due diligence practices and that I asked the parties to meet and confer with respect to that issue.

Am I remembering that correctly?

MR. KLAPPER: I don't myself have that recollection. I do know that this subject has been before your Honor, I think at the February 14, 2013 session.

THE COURT: I'm sort of remembering one of the December conferences. It was in the context of talking about industry standards.

MR. KLAPPER: Right.

THE COURT: And I asked the parties to meet and confer with respect to targeted discovery from the GSEs that could be helpful to the defendants on that score, and I don't think I ever heard back that there was a problem on that issue.

MR. SCHIRTZER: Your Honor, can I interrupt and explain?

THE COURT: Yes.

MR. SCHIRTZER: At the time you were contemplating the possibility that the GSEs, by virtue of the volume of the diligence they were having Clayton do, might have some bearing on the industry standard. You also asked us to look for

centralized files and there were none.

We then came back in the February conference and Ms. Chung explained to you that the amount of diligence of this sort that we had Clayton do was infinitesimally small compared to just the amount of diligence that Goldman did, which is when you came to the determination that we were not involved in setting the industry standard.

THE COURT: Thank you.

Mr. Klapper.

MR. KLAPPER: Leaving aside whether they are responsible for industry standards, we also discussed how their actions would be an admission by act as to what appropriate diligence was as to materiality. The fact that, for example, they at least in our limited documentation with respect to the bulk purchases, they did not follow the supposed industry standard of following up on every inquiry in a credit report, that's one of these supposed industry standards, the fact that they, in assessing compensating factors, assessed loans in a way that's a lot different than their reunderwriting reports tend to.

With respect to missing documents, they don't seem to be taking quite the same approach as their reunderwriting expert. All of this goes to both our due diligence defense and the analogue under the state blue sky laws of reasonable care, and it goes to the materiality, what really is a material

defect.

Can it really be said that it's a material defect when historically at the time Fannie and Freddie didn't consider it a material defect? This is a loan-by-loan review. That's the reunderwriting review and that's what the due diligence on these bulk purchases were. And, as I said earlier, you can easily conceive that Mr. Selendy or another member of his team at trial saying, oh, no, they are different, here is why they are different. We had a different overlay, different bunch of things that we wanted the due diligence provider to tell us. Your efforts to compare things or cross our expert using this information really is not persuasive. But all of those things go to weight. And understand, although we are far along in the process here, we still have experts coming.

The reunderwriting reports are the prototype of after-the-fact, with hindsight, litigation-driven assessments. Even if there aren't a large number of these bulk purchases, and even if they don't define industry standards, we can and should have access to what they did in the same business that we were in, in order to demonstrate that what their experts are doing today, is simply not consistent with what they did historically.

What we are asking for we believe should be relatively easy in the context of this case to find. Something as simple as the Feigles notebooks, unless he is mistaken, they are

presumably notebooks and notebooks are not e-mails. So they are things that can't be that voluminous.

The due diligence files and reports are the analogue of what we have produced in significant volume. We have listed the deals. We are talking about centralized files. Mr. Schirtzer claims that somehow they don't have them. We find that a little difficult to believe. And then we have a list, including Mr. Feigles and some other witnesses, of people who we would propose to search to determine what information they have on bulk purchases and the T deals.

It's important to understand that in the T deals there were disclosures about underwriting standards of the originators and those disclosures are extremely similar to the defendant's disclosures on loan underwriting standards. So they apparently thought that they were saying something truthful about conformity with those underwriting standards and had a basis for it, in the same way that we believe that we had a basis for the statements that we made. We think that this is in the mainstream of what we should be permitted to get discovery of and what will not be burdensome for them to do.

One thing I would say, since we discussed a little bit the statements, besides the statement about Clayton just comparing the loans, the loan tapes to the loan files, they also have, this is on page 7, and maybe this was just a slip of the tongue --

THE COURT: Page 7 of?

MR. KLAPPER: Of the demonstrative. That is their letter on February 6.

THE COURT: I need the February 6 letter, February 6, 2013 letter. I am not going to have that in my fingertips as I sit here.

MR. KLAPPER: I think I may.

THE COURT: Yes.

MR. KLAPPER: So we have taken out from this letter a few of the statements. The first is another instance of the statement about Clayton that the Clayton work was confined to a review of the loan files and comparison of the data in the loan files to the loan tapes.

(Continued on next page)

THE COURT: Yes. I find that on page one about ten lines up from the bottom.

MR. KLAPPER: Right. And similarly -- just trying to match up what's in the demonstrative.

On the second page, the second full paragraph, starting with the fourth line down, they say this argument fails because its single-family businesses did not conduct the same type of review as defendants are applying, the same standards when they talked about this. I believe what they say now is that this refers to flow loans, although my February 4th letter related to bulk loans, but it's certainly not true with respect to bulk loans.

They then go on a few lines later to say Clayton categorized certain such loans as material exceptions solely to ensure that they would be reviewed further, not because the loans were determined to have been originated in violation of underwriting guidelines. That may have been an inartful way of putting it, but if the implication is that the only thing Clayton did was to mark loans as material exceptions solely to ensure that they would be reviewed further, not because the loans were determined to have been originated in violation of underwriting guidelines, that's wrong. I mean, some loans may very well have been designated solely because they were flagged as something that Freddie or Fannie wanted to review.

But that's not the only reason. In our review of the

little we have, that's not the majority reason. The majority reason is failure to follow underwriting guidelines. And then they make the assertion -- I don't know what they base this on, but that the waiver of defects thus results in aggregate waiver rates that cannot meaningfully be compared to those defendants who employed different standards and procedures to identify exceptions. And that, to me, is a prototypical argument about weight.

We as well had the types of loans we wanted flagged. Whether we had more of them or less of them than Freddie and Fannie, we really can't say without getting the documents and be able to make that argument.

Now, to the extent that they're going to say and use as evidence at trial some of the studies by Clayton of defect rates and waiver rates, you know, we should be in a position to point out, based upon evidence, that they waived in a lot more than we did. They did waive in more than we did; according to the Clayton reports, at least more than Goldman Sachs, Freddie did. But we don't know whether that's because they had a lot more things that they wanted Clayton to designate as threes that nonetheless met the underwriting standards or because they just waived in more than we did. We don't have the discovery in order to make that argument, which is crucial to our defense, especially if they're going to be relying on the waiver rates and exceptions, and in particular, the Clayton

report about them.

So we look at this as the prototypical instance where this is highly relevant material. It would put us at a severe disadvantage, especially if they start talking about Clayton and waiver rates and the like, but we're entitled to show that they viewed the world, if anything, more leniently than we did as to what was material and what were compensating factors. And we think what little we have seen demonstrates that that's the case.

THE COURT: And that is why you would like this additional discovery on the bulk program?

MR. KLAPPER: Right. And what I've just read you, however it came to be presented, went to the conclusion that your Honor drew both at the hearing and at -- and in your opinion, that somehow this really was apples and oranges.

Now, maybe, as they seem to be arguing today, they were really making these statements about the flow purchases and not the bulk purchases. We think, as applied to the bulk purchases, these statements are not accurate as to the facts that we're aware of, and we're entitled to discovery in order to determine whether or not we're right. What we have demonstrates to the contrary, that what they did was the same process, used the same standards of compensating factors and the like; was, if anything, more lenient and resulted in a lot more waivers for these pools that they bought than for Goldman

Sachs and I believe a number of the other defendants.

THE COURT: So to just make sure I understand the context, I ruled at different points in time, but certainly I think in February with respect to certain discovery requests about the single-family side of the business. There's an argument being made now that with respect to the discovery rulings concerning the bulk loan purchases and the due diligence associated with them, including third-party due diligence by Clayton, my rulings may have been ill-informed, because there were inaccurate statements made to me and, therefore, I should revisit those rulings.

Secondly, an argument is being made to me that the bulk purchases that were made by the GSEs involved the same process, the same standards and more waivers.

Then there is a second function for Freddie Mac. Some of the bulk purchases were securitized, or some of the loans purchased through the bulk purchase program ended up in securitizations. And there may have been -- and the defendants may be making the argument that the due diligence associated with those securitizations by Freddie Mac involve the same process, the same standards and more waivers. I'm not quite sure if you're making that argument for the securitizations as well.

MR. KLAPPER: There was diligence on the securitizations. I think we know less about that, but we

certainly would like to have that information.

And I should say the overriding sum of what your Honor quite correctly summarized is the arguments that they are making against this discovery are, again, arguments about weight. They're arguments where they say, no, no, no, these things are different. Your effort to show that they're the same is ill taken. And we're at a disadvantage because while we have some of these diligence summaries and the like, we don't have the rest of them. And so we can say, based upon what we've seen, it seems clear to us that the process was the same, and we can legitimately argue at trial as to weight that it's the same. But without the discovery, it may be that they're right, but we don't know.

THE COURT: I think that the defendants are arguing, but I want to just confirm it to you, Mr. Klapper, you're not arguing that Fannie Mae and Freddie Mac were significant users of Clayton's services compared to the defendant's?

MR. KLAPPER: I don't believe that they were, based upon what little we have from Clayton, and because they only used Clayton for the bulk purchases.

THE COURT: And so when you talk about industry standards being reflected in the work done by the GSEs, are you talking about the way they used Clayton, the third-party due diligence firm? What function are you saying that the GSEs did on the bulk purchase side that helped create an industry

standard?

MR. KLAPPER: We're not saying that it created an industry standard. What we're saying is that, as evidence of the industry standards, since they're a member of the industry, even though they use Clayton less, that what they did is an indication of what the industry standard was and is also an admission by act as to what was an appropriate way to diligence.

THE COURT: And are you talking -- again, I'm just trying to focus on what function of the GSEs you're addressing that argument to. Is it the use of Clayton?

MR. KLAPPER: It's in the reunderwriting. It's the use of Clayton and their response to Clayton. So Clayton prepares these reports as it does its due diligence, and there was apparently, between Clayton and Freddie and Fannie, a dialogue, as there was with my client and other defendants when they used Clayton. And Clayton would say, this is a three, and there would be a reaction to that. And it would eventually result in the loan being kept in the pool or the loan being out of the pool.

So it's not just Clayton's work; it's the work of Fannie and Freddie in interacting and responding to Clayton.

THE COURT: Okay. So it's the use of Clayton to perform due diligence with respect to pools of loans that were purchased through the bulk process?

MR. KLAPPER: I would say -- I mean, we mentioned Clayton. There are other due diligence providers who did similar -- performed similar diligence. We don't know whether they used any of these other diligence providers, but I would view any of them that they used as being the same as Clayton.

And then to the extent that they used outside AVM services -- that's the automated valuation model, so that's valuation due diligence -- we would want to see what they did and how they reacted to the results of that diligence.

THE COURT: So the AVM model is not -- that's a process that you use internally, or are you saying a third-party vendor applies that to the bulk purchase program?

MR. KLAPPER: I don't know how Freddie and Fannie did it, but for Goldman Sachs, we used outside vendors to provide the information to them. They would come back with results of the AVM model that they had.

THE COURT: So basically what you are seeking to learn from this tranche of your discovery is the way that Fannie or Freddie used third-party vendors to do due diligence, and to make an argument from that that their use of due diligence as they purchased loans through this bulk purchase program sheds light on what they thought were the appropriate industry standards for due diligence programs?

MR. KLAPPER: Right. Right. And, you know, it is very much the core of where this case is heading, because where

we're heading, where we have headed, is from this all originators have totally abandoned their origination standards to the loan by loan reunderwriting part of the case. And that's very detailed, and it's very much dependent, I believe -- we'll see -- on subjective judgments.

And how it was done, you know, what the reaction was to let's say Clayton saying, we think that this person has overstated his income, what the reaction was to that, all of that goes to the question of due diligence but also the question of loan origination; because, after all, the diligence is just a second look at the decisions that were made by the originator of the loan at the time they made the loan. So if the originator of the loan thought that this was a good candidate for a loan and relied on the candidate's representation that he made $6,000 a month, this is a redo of that by the diligence firm and then between them and the client of the diligence firm, a determination, even if you don't believe you think he overstates his income, it is nonetheless a good loan.

THE COURT: Well, good enough to purchase through the bulk loan program.

MR. KLAPPER: Yes.

THE COURT: As opposed to for the defendants, good enough to include within the supporting loan group.

MR. KLAPPER: I think it's the same thing.

THE COURT: Okay.

MR. KLAPPER: They're buying the same loans --

THE COURT: I think, actually, it's very different. When you have a supporting loan group, you are making representations covered by the securities laws to the public about the quality of the contents of the supporting loan group. When you are buying a loan for yourself, you're making a judgment for yourself about the risk you want to take having looked at that loan with whatever level of care you do. But in any event, I think I understand the task that you've set before me.

Now, looking at your Exhibit A, defendant's targeted requests, you have in paragraph one due diligence files and reports for identified purchases and securitizations. In two, you have Mr. Feigles', F-E-I-G-L-E-S, binders. In three you have further production from four custodians. In four you have ten new custodians. In five you have performance data.

MR. KLAPPER: Yes.

THE COURT: Good.

MR. KLAPPER: We are willing, obviously, as we always are, to talk burden with the FHFA, but this is a key area. We think we have done this before with FHFA; that if you have for the new custodians, if you have rather limited search terms and effective search terms, it can be a very targeted exercise. Burden is always an issue that we're willing to discuss.

THE COURT: Thank you very much, Mr. Klapper.

MR. SCHIRTZER: Your Honor, again, I want to respond not necessarily in the same sequence, but I will start with something that we talked about at the end, which is that you are talking about two very different exercises. In the context of the GSE's bulk purchases, we're talking about a contractual purchase subject, again, to a repurchase obligation, the right to put back those loans. This is not a securities law question in terms of the amount of diligence that is reasonable to perform before making representations and offering prospectuses settled, two fundamentally different exercises.

As I'm sure is apparent, your Honor, there's a very substantial difference between the requests that are contained in items one through five of Exhibit A and the Clayton due diligence material, which at some point Mr. Klapper suggested that's what he was really after, but I'll try to address both in turn.

This is about the umpteenth request for the Clayton due diligence material, whether it resides in the files of Clayton or resides in the files of the GSE. And your Honor has devoted an extraordinary amount of time previously to considering that issue. And your Honor ultimately made the determination, which I do not hear defendants now disputing, that because the GSEs did not set any industry standard in terms of how they used Clayton for performing this sort of bulk

due diligence, that there was no reason to go into discovery of an entirely different set of loans, which by definition are not the set of loans in the supporting loan group.

I do want to address the purported misrepresentation or misleading suggestions in connection with Clayton because they simply do not hold water. And I will start off by pointing your Honor to the February 6, 2013, letter from my firm, and specifically, from Mr. Selendy, myself and Ms. Chung, among others, talking about this Clayton due diligence issue.

In connection with that letter, we actually produced to your Honor, or actually pointed out to your Honor, that as attachments to Mr. Klapper's letter to which this responded were Exhibits F, H and J. And those exhibits were the very Clayton reports showing that the files were reviewed and the extent to which files were rereviewed, and then going on to discuss the instructions that we gave to Clayton and how those instructions may have differed from the instructions that Clayton received from the defendant.

So there was no suggestion -- there was no attempt to in any way hide the ball in terms of what Clayton was doing for the GSEs. In that same letter we go on to say -- and this is in the second paragraph of page one, five lines down. The contemporaneous Clayton type diligence of a sample of single-family loans was confined to a review of loan files -- a review of loan files, and -- not or, or not in connection

with -- and a comparison of the data in the files to the loan tapes.

So they reviewed loan files and they reviewed loan tapes. And on occasion they did some element of verification of what was in the loan files. We never pretended otherwise. The reports say, in fact, that they did sell. But the point that was being made at the February 14th hearing -- and this is why context is everything -- is the issue that was being addressed when Ms. Chung made the comment about comparison of loan tape to loan file was the defendants' argument to the following effect: In connection with your complaint, you say that 90 percent of the loans are defective, but if you look at the Clayton reports, they say only 15 percent of the loans are defective. And it cannot possibly be the case if you were relying on Clayton at the time to do this due diligence on bulk files, it cannot possibly be the case now that there's a 90 percent defect rate and we're entitled to this information to prove that point.

And the point Ms. Chung was making, which we stand by, is that there's no comparison, then or now, to the sort of effort that is being undertaken or was undertaken in connection with the reunderwriting that was done in this case, the amount of time spent, the level of effort put into it compared to what Clayton had the opportunity to do and was asked to do. They are truly apples and oranges, maybe not even in the same fruit

category.

And consequently, Ms. Chung was trying to point out that even if you got these Clayton documents with respect to the special instructions that the GSEs gave to Clayton, and it got defect rates, you would not be comparing apples to apples if you were trying to understand how it is we get to defect rates of 90 percent in connection with the reunderwriting. And your Honor understood that point, and your Honor basically adopts that point in the June 28th hearing -- I'm sorry, June 28th decision.

So there is no suggestion in the June 28th decision that your Honor was misled in connection with a decision regarding Clayton due diligence. You adopted the ruling you did for the two reasons I've articulated: The GSEs don't set the industry standard in connection with use of Clayton type due diligence and what Clayton did for the GSEs, subject to special instructions on scattering of bulk transactions, is not going to be informative of whether the reunderwriting effort taken in connection with these complaints and these actions is or is not supportable.

So then let's move on to the balance of -- unless you have questions about any of that. Okay.

Let's move on to the balance of what is now being requested in bulk, because --

THE COURT: Are you going to address the misstatements

on page two, the alleged misstatements on page two of the February 6th letter?

MR. SCHIRTZER: I was just talking about the February 6th letter.

THE COURT: I know you focused on page one. I'm sorry if I didn't hear or understand what you were saying about the second page, the paragraph that starts, nor is there an apples-to-apples comparison. There are three sentences there that Mr. Klapper wanted me to focus on. The sentence that begins, this argument fails because the single-family business did not.

MR. SCHIRTZER: Right.

THE COURT: And the sentence, Clayton categorized certain such loans as material exceptions. And then the very last sentence in the paragraph, the waiver of such fee affects those results.

MR. SCHIRTZER: Yes, your Honor, I'm happy to address each of those. And the representations that were made in connection with that letter are absolutely accurate. And in fact, your Honor has previously, in connection with reconsideration, looked at this very question and decided that the representations that were made in this connection were accurate.

There's no dispute, as far as I know, that Freddie Mac identified loans that it wished to have reviewed for further

reasons that were entirely unrelated to compliance with underwriting guidelines, and that that pumped up the defect rate and consequently would pump up the waiver rate when those loans, upon further review, were found to comply with underwriting guidelines.

And consequently, when Ms. Chung said that you wouldn't have a meaningful comparison as a result, it's because of those special instructions. And although I heard Mr. Klapper say that not every identified defect was a special instruction, I did not hear him deny that, in fact, we did give special instructions, that they were different than the instructions that were provided by his clients or other defendants. And so consequently, when you are dealing with different engagements done pursuant to different instructions, it would not be terribly informative to try to compare the defect or waiver rates, or at least it would require extraordinary effort to put into context -- we'd have a subtrial on something that has nothing to do with the securitizations -- to put into context the comparison of defect rates and waiver rates and what they were doing in connection with their due diligence and what we were doing in connection with our due diligence.

THE COURT: And when the Clayton counsel was here not too long ago it, confirmed that each appointment or engagement had its own standards and done its own specialized review, as

far as from Clayton's point of view.

MR. SCHIRTZER: And I haven't heard defendants deny that either.

So now we come to the portions of Exhibit A to Mr. Klapper's letter of the 15th that don't relate to Clayton, or at least don't necessarily relate to Clayton.

Category one is -- I have counted them up, it's 59 separate bulk transactions, none of which, obviously, have anything to do with the supporting loan groups because they were entirely separate transactions.

Category two is the Feigles binder, which I'll come back to in a second.

Category three is documents relating to the GSE's alt A and subprime bulk purchases and alt A flow purchases that were previously withheld from the e-mail production of FHFA custodians on the grounds that they were not provided to or accessible to PSL traders, their supervisors or senior risk custodians. So in other words, that's a full assault on the protocol that has informed single-family discovery since July of 2012. But ironically, the four people listed in this group are Mr. Feigles, Ray Romano, Mr. Delvecchia and Pam Johnson. And because the last three of those people are all senior risk custodians, they've essentially gotten what they're asking for because we didn't draw the same lines with respect to senior risk custodians, but instead, as I mentioned to your Honor

previously, for senior risk custodian, they got anything that discussed single-family risks associated with an originator or the originators' underwriting guidelines or adherence to underwriting guidelines.

Then category four is ten I believe new custodians. And I think virtually all of them have never been requested.

And category five is documents sufficient to show the performance of bulk purchases of subprime or alt A loans. And that, too, has never been requested. And there's no real explanation as to why these requests should be made for the first time now, other than the defendants are curious about this information and would like to have it.

So let's try to understand the bulk purchase program a little better, to the extent that it's informative to these requests. On some level we have never disputed for a second that underwriter guidelines -- I'm sorry, lender guidelines are the starting point for the loans that are purchased in bulk pools, because if you think about the process, that's necessarily the case. They get originated by a lender. The lender doesn't necessarily know who they're going to, so they are originated pursuant to lender guidelines. And we've never said otherwise.

And, in fact, we took great pains at the February 14th conference, and other places as well, to distinguish between flow and bulk for this exact purpose; flow pursuant to our

guidelines, bulk not by the nature of the beast.

However, there have always been -- and we've made this clear throughout -- an overlay that is imposed by both Freddie Mac and Fannie Mae in connection with the bulk purchases that overlay could be the imposition of the same types of eligibility groups that we saw in variances and waivers that we presented to the Court in connection with the November 6th letter. In connection with Freddie Mac, they actually had something called Freddie Mac safe steps, which was a series of requirements that needed to be met before bulk purchases would be made by Freddie Mac based on loans originated pursuant to guidelines.

And with respect to -- I should add, just so we have a complete record, with respect to bulk alt A purchases, those were done by Fannie Mae solely in connection with variances. And consequently, you would have individual contracts for any bulk purchase that you got for Fannie Mae. And those contracts, as we've seen from the variance analysis that we present to the Court, could have different requirements in different cases, but generally towards Fannie Mae's guidelines.

And so although it is true that lender guidelines are a starting point for bulk, it's not the finish line. And consequently, if we were to go down this road, there would be and extraordinary amount of effort to try to determine exactly where there are similarities and exactly where there are

differences between these pools of loans, none of which by definition wound up into the supporting loan groups.

Just to circle back and touch base on some of the points that Mr. Klapper made, he said he was not -- he said that these documents that were being requested would be an indication of industry standard, even though he seemed to acknowledge that the GSEs were not setting the industry standard with respect to the purchase of these loans. And he also said it would be an admission by act, and, your Honor, I specifically previously rejected the admission by act argument.

Sorry, I promised to come back to the Feigles notebooks because it's the one category on Exhibit A that I didn't talk about. As I understand it, Feigles notebooks are some haphazard notes of diligence performed on some deals. They are incomplete. And to the extent that those notes related to the diligence performed on any PLS transaction, we have already produced those documents.

And in fact, your Honor may recall also on the subject of T deals, which is related, we had previous discussion about the relevance of T deals. And I represented to your Honor that there was, in fact, one and only one T deal that was done based on loans that were in a supporting loan group that had some bearing on the securitizations. And we promised to produce the documents relating to that T deal, and we did produce the documents relating to that T deal. The line that we drew at

the time and that your Honor endorsed at the time was that T deals having nothing to do with PLS purchases were beyond the scope and need not be produced. So that is yet another thing being revisited here today.

And the same is true of the Feigles notebooks. So diligence on deals that had nothing to do with PLS, and by definition nothing to do with the supporting loan groups, are documents that we have not produced. And if we did, we'd have another side show because it's not just a matter of producing Mr. Feigles' notes, but it would be a matter of producing everything that would be needed to supply the context to interpret Mr. Feigles' notes so that defendants don't take stray sentences out of Mr. Feigles' notebooks and say, you see, this shows X, Y or Z because, in fact, what we'd have to do is do an entire analysis of the diligence program on each of those transactions to put Mr. Feigles' notes into context.

That's exactly the line you have not been inclined to cross until now, based on the appropriate consideration of Rule 26 and Rule 1, but that's exactly the line that defendants are asking you to cross to, in essence, ask that we have a trial within a trial about transactions that have no bearing at the end of the day on securitizations, by definition loans that were not part of the supporting loan groups and did at least in part involve different standards, that did at least in part involve different levels of due diligence. And for that reason

there's no reason for your Honor to revisit the prior rulings that have been made on this precise subject on multiple occasions.

(Continued on next page)

THE COURT: Give me a moment to just look more carefully at the February 14 transcript to understand the context of the statement at page 62.

MR. SCHIRTZER: Your Honor, than can I respectfully suggest that you look at 63 as well. There is a carryover.

THE COURT: Thank you.

I think that it's correct to understand the context of each of these arguments and each of the references, and I want to thank counsel for their patience today and helping me understand as clearly as I can what's really at stake from their points of view.

I don't want to oversimplify this, but I think a lot of what's underneath the defendants' requests here is a desire to be able to show at trial that Fannie Mae and Freddie Mac were very much on notice that there were problems with the origination of mortgage loans in America during this period of time, that originators were not following their guidelines, are not being careful in doing so, and that Fannie Mae and Freddie Mac were on as much notice as the banks were that this product came with a lot of red flags.

So Fannie Mae and Freddie Mac were sophisticated buyers. They were sophisticated parties in this market. They understood the risks they were taking when they bought private labels security. And for them now to come into court and resort to the securities laws in a way they are is

fundamentally unfair. And so to the extent that there are legal issues about burdens of proof at trial and the impact of the strict liability statute, like Section 11 is, the defenses that are available to the defendants in that context, as opposed to a fraud claims, where it is a very different circumstance that both plaintiff and defendants are facing, that's all been very important to understand as this plays out in discovery.

But because I've understood that the defendants have wanted to make that argument about the plaintiff's knowledge and appreciation of the quality of origination, I have permitted discovery about the GSE's knowledge about originators. We have attacked it in a number of ways and there have been a number of kinds of documents that have had to be produced. So those arguments could be made effectively at trial, and I won't summarize them. By and large, they are captured in the June 28 opinion. It doesn't presume to be an exhaustive list by any means, but it summarizes some key categories.

There is a fundamental problem with these requests that are being made, the attachments to these two letters, and that is that they are not limited. They are not targeted. They are definitely untimely. To the extent that they are appropriate to be made, they should have been made months ago, a year ago. There is no way, actually, to, in a few words,

describe the burden that would be imposed upon one and all of reopening document discovery to provide the material demanded here. There is the burden of production which in some cases is extensive.

But then there is the burden of review and analysis and the requests for more material and more depositions and more work by experts, et cetera, et cetera. So that's why discovery has limits and that's why it's sequenced. Everyone knows that litigation of this sort is a mammoth, expensive undertaking that puts enormous demands on your clients, enormous demand on the resources of your firms. And that's why we try to limit it by time and number and a variety of ways so that litigation provides you with the critical information you need and, yet, is not so expensive and burdensome that you really can't litigate, that you can't pursue the truth.

And, fundamentally, the job of a court is to try to understand the problems from each side's point of view well enough that you can be making reasoned, reasonable judgment calls about where to draw those lines. No one is perfect. I don't claim to be perfect. All I can do is try my best. And if I made an error, I want to correct it, if the defendants have identified something now that they either forgot to ask about earlier or did ask about and I misunderstood something and I drew the line in the wrong place, or maybe I didn't misunderstand anything. Maybe based on the argument that was

made to me then, I drew the line as a reasonable judge might. But things have changed and I should revisit.

As you get closer to trial and closer to the actual end of discovery, you just have, as a party, a greater burden to bear in asking the Court to revisit and asking the parties to undertake this additional burden of discovery.

And so the question is, have the defendants shown either their error or my error, no error? Have they shown that now we should revisit any of these issues? Because justice demands it. Ultimately, we want the trial to be a search for the truth. Does the jury need this evidence or would it be helpful to a party in preparing for trial to have available to them this evidence to help shape an argument? You know, at the beginning of a discovery process you can cast a wider net. Now we are at the end of a discovery process and you really have to make a stronger showing that it really is going to help in the truth-finding process at trial because the burden is going to be, at this point, enormous.

So perhaps I shouldn't, in managing this litigation, allow an issue to be revisited over and over and over again. I certainly have allowed that. And you could all fault me for that. You could all be quite tired seeing the insides of this courtroom. But the issues are critical to you and I want to get it right. And if I have not gotten right before, I want to get it right now.

I don't even see a close call on the flow issue. This is such a different program with such minimal relevance to anything that's going to be tried here. And I think this afternoon's argument was a good example, that it is hard to come up with a coherent presentation about how loans through this continuous flow, pursuant to what at least is a starting point, are the internal agency guidelines, or guides, by Fannie Mae and Freddie Mac so that the marketplace knows, Fannie and Freddie Mac will purchase loans if they meet these standards, and so it's very clear. And if you want a variance from those standards, you come in and negotiate it. But that's what it is. It has to be a variance from Fannie Mae's or Freddie Mac's standards. It's not being sold to them because we can represent this meets our own personal originator's guidelines 100 percent. It's a different kind of program.

And Fannie Mae and Freddie Mac, through counsel and client working together, have made a very forceful presentation about the minuscule potential that there is anything relevant to an analysis of an underwriter's guidelines and adherence to those, if we look at the flow program and reopen discovery in the way requested.

Let me turn, instead, to analysis of the bulk program. And this is where defense counsel begin by saying, well, your Honor, you may have made your prior rulings because you misunderstood, through no fault of anyone, but through a

misdescription about the bulk purchase programs, what was going on at Fannie Mae and Freddie Mac. And there is a statement made at page 62, one sentence at page 62 of the February 14 transcript, in a context of pages of description given by plaintiff's counsel. And there are four statements identified in a February 6 letter from plaintiff's counsel.

So at the February 14 conference Mr. Klapper began speaking at page 51, and this was a debate about the defendant's rights to additional discovery about the 90 percent figure contained in the plaintiff's forensic review as reported by their amended complaint. And there was an argument being made about a systemic disregard of loan underwriting standards by all originators, and that 90 percent figure.

And then Mr. Klapper developed an argument over several pages. And then Ms. Chung, at page 58, responded or began her response. And at page 62 is the statement that's been identified, and then Ms. Chung's argument continues for some time. And because there had been these letters in advance, counsel were aware in general terms, and probably from your descriptions with each other, of the issues. And so you were trying to educate me. After all, you're confined, very arbitrarily, to a two-page limit in a letter. And I prefer to learn from you orally the detail. Even though I assure you, I read your two-page letters and your attachments with care. But I prefer to make sure that I have a chance to hear from you

orally and ask my questions to make sure I understand.

And I think it is fair to say that Ms. Chung at that point, on page 62, was making a comparison about the kind of review done by Clayton and the kind of review, the forensic review done that resulted in the 90 percent figure. And that's what it looks like to me today and it's very hard for me to remember what I was thinking at the moment. I heard the material on page 62. But that's what it looks like to me, and I expect that's how I heard it then, too.

With respect to the February 6 letter, it is true that the sentence on page 1 did not capture the fact that Clayton may on occasion do some review or due diligence beyond an examination of the loan files and the loan tapes, but, again, the context of that statement was a comparison with the reviews, the forensic review undertaken in the complaint and that creation of a 90 percent figure, and an examination of what Clayton did and waiver rates or exception rates in that context. So context is everything.

With respect to the statements on the second page, the three statements on the second page, I don't think there is any disagreement today, factually, with any of those statements. And indeed I think the attorney from Clayton, with his client sitting right beside him, in this courtroom made the same representations.

Now, I've asked FHFA to examine the documents that

reflect two kinds of reports that were identified on the exhibit in which the defendants are making requests related to the flow program. Those reports may refer to flow loans, they may refer to bulk purchase loans, I have no idea. But they will undertake that examination as soon as the defendants identify the correct exhibits to them. They will have a meet and confer process. They will agree, they will disagree. If they disagree, I'll hear you.

Let's turn to the bulk purchase and the substance of it. So it's easy to rule or analyze something or much easier, at least, if you stay at a 10,000 foot level. It's just more important, though, to get down closer to the ground, whether it's a legal issue, like admissions by act, or a factual issue of, well, what actually was Clayton doing for the bulk loan purchases and how does that relate to the tasks it was doing for the defendants? And when I say Clayton, I mean any third-party due diligence firm. I'm not suggesting here that the ruling would be confined to Clayton. If it's appropriate to get these documents, it would be appropriate to get them for any third-party due diligence firm that Fannie Mae or Freddie Mac used in their bulk purchase program.

So as I understand it, I am just going to state it because if I've got it wrong, then counsel, please, correct me. What we are focusing on right now in connection with the bulk purchase is that there were purchases that were negotiated

between Fannie Mae and Freddie Mac of pools of loans. And these were originated with respect to the guidelines that were in place by the originator who was directly or indirectly offering the loans for sale. And Fannie Mae and Freddie Mac had their own standards that they would apply and they didn't simply ask, did it meet the originator's originating guidelines.

That wasn't the beginning and end of the issue as Fannie or Freddie were purchasing these pools of mortgages. And in connection with these purchase decisions there were occasions on which Fannie Mae -- I'm sorry. I don't know if both entities used due diligence firms, outside due diligence firms. Did they both? I know Freddie did.

MR. KLAPPER: Yes, your Honor.

THE COURT: So there were occasions in which both Fannie Mae and Freddie Mac used outside due diligence firms, and they would design with those due diligence firms, as was customary, and as the banks did, independently the ways in which they wanted those outside due diligence firms to look at the pool of mortgages and analyze whether or not they conformed or didn't conform with the standards. And then they would, after getting these reports, decide whether or not to actually waive into the pool and actually purchased a loan that may not have conformed to the parameters that were used or given to the third-party due diligence firm. When Fannie Mae or Freddie Mac

took those loans, they were taking them pursuant to contracts that, by and large, gave them the right to require repurchase.

The defendants used third-party due diligence firms to help them perform their due diligence function in connection with securitizations. And here the task, perhaps varied, but included specifically identifying whether or not the loans conformed with the originator's underwriting guidelines so that a representation could be made in a prospectus supplement about the extent to which the group of loans for the supporting loan group did or did not generally comply with the originator's underwriting guidelines.

The GSEs made very little use of third-party due diligence firms when one compares the use of those firms by the defendants. Again, I'm stating this. So if I'm wrong, you'll correct me.

MR. KLAPPER: Your Honor, the only thing that is in the record that I know about is Clayton. I have no idea what Freddie, Fannie did with Opus and other third-party -- I would like to correct two points which I think are not accurate. One is, Goldman Sachs, and I believe a number of the other defendants, performed due diligence when it purchased loans because it did not originate loans except in extremely small amounts. And it purchased those loans with the same kinds of representations and warranties and put back rights that Fannie and Freddie are talking about here.

So, in fact, we diligenced pools of loan before we bought them as we had rights if there was a breach of the representation of warranty to put loans back to the person we bought it from. And just to correct something, maybe a misimpression here about Clayton and the other third-party diligence providers, we had an overlay, Freddie had an overlay, Fannie had an overlay. We don't know without discovery whether our overlay was much different than their overlay, whether Clayton was identifying the same things for us as they were for them. I don't think it's accurate to assume that these overlays were different in any material way. They may have been. But, again, without the discovery, we can't know.

What we do know is that the primary job of Clayton and of the third parties was to diligence the loans as against the originator's underwriting standards. The rest of the job, the identifying additional things was part of the job, but it was in addition to checking the underwriting standards. So I just wanted to correct those points.

THE COURT: Thank you very much, Mr. Klapper.

Let us say that a defendant such as Goldman Sachs did the due diligence when they purchased the loans, and then they decided to put those loans. And were you purchasing them to put them into a securitization or were you purchasing them for some other purpose?

MR. KLAPPER: Generally for securitizations, but not

always.

THE COURT: When you put them in the securitization, did you, again, do a different kind of due diligence, or not?

MR. KLAPPER: No. The diligence was done at the time of the purchase of the loans. They were put into a securitization. Generally, that would be between one to three months after the purchase. There would be additional work that would be done to identify the loans that were delinquent or the like. But the primary diligence was at the stage of purchase of the pool of loans. That's for those transactions where Goldman Sachs was the sponsor and the depositor. Where it was just underwriting, it diligenced at the time of the underwriting.

THE COURT: And did you wait one to three months because that was the exhaustion point of the put-back rights?

MR. KLAPPER: No.

THE COURT: So were you waiting to see if they defaulted within that one to three months? I don't know why you wouldn't do due diligence then.

MR. KLAPPER: Purely mechanical. If you buy a pool of loans and intend to securitize them, sometimes you have to buy multiple pools, you have to draft the documents, you have to do a lot of work. When I say one to three months, that tended to be the period that it took between when you bought the pool of loans and when you securitized them. If the loan went

delinquent before the securitization, in general, Goldman Sachs, at least, did not include it in the securitization, so it may have had an early payment default put back right. If it got into the securitization and then went delinquent, the securitization itself would have a put-back right. And the early payment default put-back rights are just one of the representations and warranties. And it gets complicated as to who exactly has the right to put back. But there certainly were loan purchase agreements with representations and warranties by the seller and the right to put back loans if there was a material misrepresentation.

THE COURT: So the due diligence that, at least in the example you have given of Goldman Sachs, was done once and for the purpose or with the intention that that would be the due diligence done for the securitization?

MR. KLAPPER: It was for the purpose of determining whether or not the loans that were about to be purchased met the underwriting guidelines and with the thought that, in general, there would be a securitization. Securitization would say the loans were originated in general in accordance with the underwriting guidelines, so it served a dual purpose.

THE COURT: Again, just that statement, two different purchases for these programs. Now, as I understand it, there has already been discovery produced, I think it was by Freddie Mac, in connection with bulk purchase loans that came from a

same pool that ended up producing loans that went into one of the supporting loan groups.

Do I understand that correctly, Mr. Schirtzer, the overlap?

MR. SCHIRTZER: Freddie did a T deal off of one of the securitizations. I believe it was all within securitization and, yes, we produced documents in connection with that.

THE COURT: So the requests made for the bulk discovery are just massive and I appreciate that Mr. Klapper says that you're happy to narrow the requests in some way. I don't know in what way. I would have hoped in advance of today's conference you would have presented that narrowing. But the idea that we would have 10 new custodians about this very different program, that's not going to happen.

I know that Mr. Klapper has referred over and over again to the fact that any decision I make with respect to discovery shouldn't be about weight. I shouldn't be assessing how powerful the argument will appear to a jury, but that's not the standard I've been using. I have not been using a standard of admissibility or relevance. I've started from the standpoint of trying to understand relevance because that, I believe, should always be the starting point for discovery requests. How is it related. Why do you need it. But that doesn't confine or describe what's discoverable. That's just a starting point. And this is an enormous request, far too late

in the day, with no persuasive description to me of why this request is being made now, as opposed to last July or last February, to the plaintiffs.

I am going to take a brief recess and reflect on whether there is anything more I need to say. Thank you.

(Recess)

(Continued on next page)

THE COURT: So, Mr. Schirtzer, I'd like to give you one more thing then, please, for Mr. Klapper.

Besides looking at these two exhibits and figuring out if they reflect monthly reports and whether or not those may or may not be relevant in the way that is broadly appropriate here for discovery purposes, and how burdensome it would be to produce them at this late date, I'd like you to investigate and report to defense counsel the extent to which the GSEs relied in their bulk purchase program on third-party due diligence firms. So there have been representations made about the use of Clayton, but if the GSEs were using other due diligence firms in a significant way, then maybe Clayton isn't the appropriate benchmark to understand the role that these third-party due diligence providers played with respect to the GSEs in this market.

MR. SCHIRTZER: Your Honor, we will do that, but I think Ms. Chung actually has something to add on this subject, if she can.

MS. CHUNG: Yes, your Honor. I was going to say earlier -- I should have said it before -- the figures that we've given the Court in the past about the extent to which Clayton type diligence was done were always based not just on Clayton, but on Clayton type firms.

So, for example, in the February 6th letter that we've discussed a lot today, one of the sentences we have is the

summaries defendants seek are of due diligence conducted by third-party firms like Clayton. And then there's a footnote that describes the extent to which this kind of diligence was done. I know that there are other places and other letters where we've made similar representations. We've always included Clayton and other third-party firms.

But we can -- we will look into it again, your Honor, just to make sure.

THE COURT: I hate to invite anything more, but I really have nothing more to say.

Good. I've kept you too long. Thank you very much.

(Adjourned)